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ALEXANDER L. STEVAS.
CLERK

THE SCHOOL DISTRICT OF THE CITY OF
GRAND RAPIDS, et al,

Petitioners,

v.

PHYLLIS BALL, et al,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

VOLUME II
JOINT APPENDIX

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TABLE OF CONTENTS**Volume II**

	Page
Joint Proposed Findings of Fact on Behalf of Defendants and Intervenors Filed in U. S. District Court	290
Plaintiffs' Proposed Findings of Fact Filed in U. S. District Court	378

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICANS UNITED FOR
SEPARATION OF CHURCH AND
STATE, et al,

Plaintiffs,

vs.

SCHOOL DISTRICT OF THE CITY
OF GRAND RAPIDS, et al,

Defendants,

and

IRMA GARCIA-AGUILAR and
SIMON AGUILAR, et al,

Defendants-Intervenors.

Case No.
G80-517-CA1

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JOINT PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON BEHALF OF
DEFENDANTS AND INTERVENORS

TABLE OF CONTENTS
FINDINGS OF FACT

	Page
I. GRPS Philosophy of Education	293
II. GRPS Programming	296
A. Programming Overview	296
B. Shared Time/Community Education	299
C. Statistics	299
III. Shared Time	300
A. Definition	300
B. History	302
C. Course Offerings	302
1. Math	306
2. Reading	310
3. Music	314
4. Art	316
5. Physical Education	319
6. Industrial Arts	322
D. Location	322
E. Students	326
F. Teachers	328
G. Operation	335
1. Administration	335
2. Hiring Procedures	338
3. Supplies and Materials	341
4. Grading	342
5. Lack of Entanglement	342
6. Little Contact With Nonpublics	343
H. Availability to Other GRPS Students	344
I. Understanding of Nonpublic School Administration	344
IV. Community Education	346
A. Purpose	346
B. Course Offerings	346
C. Location	349

	Page
D. Students	349
E. Teachers	350
F. Availability to Other GRPS Students	352
G. Operation	352
V. State Aid	353
A. Payment for Part-Time GRPS Students	353
B. State Aid Payments Exceed Shared Time and Community Education Costs	354
VI. Miscellaneous	355
A. Enrollment Trends	355
B. Nonpublic School Finances	357
C. Political Entanglement	357
D. Title I	358
E. Feasibility Study	359
F. Conducting Educational Programs Outside School District Boundaries	360
G. Requirements for Graduation and Course Offerings	361
VII. Plaintiffs' Standing Under Article III	361
A. Alleged Taxpayer Status	361
B. Lack of Injury to Plaintiffs	362
VIII. The Religiously-Oriented Nonpublic Schools That Lease Space to the GRPS For Shared Time and Community Education Programs Are Not Pervasively Sectarian	362
A. Catholic Schools	362
B. Christian Schools	367
C. Lutheran Schools	371
D. Catholic, Christian and Lutheran Schools Are Religiously-Oriented, Not Pervasively Sectarian	372
IX. The Baptist Schools are Pervasively Sectarian ...	373

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JOINT PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON BEHALF OF
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FINDINGS OF FACT

NOW COME the defendants and party intervenors, by and through their respective attorneys of record, and submit the following Joint Proposed Findings of Fact and Conclusions of Law:

I. GRPS Philosophy Of Education

1. The Board of Education of the Grand Rapids Public Schools (hereinafter referred to as "GRPS" or the "Board") has

adopted an official policy regarding its basic Philosophy of Education, which policy was adopted on January 3, 1972.

Reference: GRPS Ex FFF; Vrugink, Vol VIIA, pp 1069-1070.

2. "The Grand Rapids Board of Education is committed to provide for each student, an equal opportunity for a quality education.

Education is an endeavor or process which seeks to develop an excellence of mind, spirit, and attitude of which man is so uniquely capable and having as its ultimate goal the happiness and fulfillment of each individual and the welfare of society.

The Board recognizes that no two students are alike; they have differing needs, differing abilities, differing aspirations. The Board seeks the fully developed individual, maximizing his potential, talents, and interests. The Board is concerned for the exceptional child and will provide opportunities for both the talented and the handicapped.

Education in Grand Rapids Public Schools shall enable each individual to:

- A. Acquire the basic skills.
- B. Apply rational intellectual processes to the identification, consideration, and solution of problems.
- C. Develop a comprehension of a changing body of knowledge of the various disciplines.
- D. Learn good health and safety habits as well as muscle coordination.
- E. Experience an environment that will motivate and develop an inquisitive mind capable of critical and objective thinking and independent study.

- F. Progress toward a marketable skill.
- G. Realize the interdependence and the common destiny of all citizens of the United States.
- H. Become a citizen who has a sense of self respect, who respects the person and rights of all others, who accepts the responsibilities and disciplines of our society, and who respects the law.
- I. Understand and deal with social problems thoughtfully and objectively.
- J. Have an opportunity for continuing education.

Education is a cooperative endeavor requiring reciprocal effort on the part of the teacher and students supported by the cooperation of parents and the community.

The Grand Rapids Public Schools shall utilize all available facilities and equipment to provide a healthful and stimulating educational environment. School facilities shall be used for the regular program, continuing education, and the community."

Reference: GRPS Ex FFF.

3. The Philosophy of Education of the GRPS serves as an important basis for the varied educational programs provided by the district.

Reference: Pojeski, Vol VA, pp 895, 901-903; Vrugink, Vol VIIA, p 1070.

4. In addition, the present administration (i.e., Dr. John Dow) of the Board has vigorously pursued in recent years a "Campaign for Excellence" theme similarly designed to enhance the academic achievement levels of GRPS students, to improve the efficiency of the operation of the district, and to

develop new and creative ways to improve citizen and parent participation in the affairs of the school district.

Reference: Vrugink, Vol VIIA, p 1071.

5. This theme for the '80s, together with the district's Philosophy of Education, along with other factors, serves as the basis for the educational opportunities made available through the GRPS, including the Shared Time (i.e., regular school day) and Community Education (i.e., before/after school) programs.

Reference: Vrugink, Vol VIIA, p 1071; GRPS Ex EE.

II. GRPS Programming

A. Programming Overview

6. The goal of the GRPS is to provide educational opportunities for the whole community.

Reference: GRPS Ex EE.

7. The term "community" in the Grand Rapids context takes on special significance because of the unique makeup of the Grand Rapids area in terms of the large number of families who choose to send their children to nonpublic schools.

Reference: GRPS Ex TTT, p 9; Vrugink, Vol VIIA, pp 1097-1098.

8. The GRPS is a school system accredited by both of the accrediting entities in the state, the North Central Association of Colleges and Schools and the University of Michigan.

Reference: Vrugink, Vol VIIA, p 1077.

9. Since the early 1970's, the GRPS has been widely recognized for the wide range of educational experiences which it makes available through its elementary education program, not only in providing a complete curriculum for elementary school students at some 42 sites, grades kindergarten through sixth, but also because of its prekindergarten program (1,715 participants), its alternative schools program (105 students participate), its spectrum program for gifted and talented students (360 students participate), its lighthouse program for those students who enjoy the adventure of learning (1,200 students participate), but also because of its environmental studies program for sixth graders (110 students presently participate).

Reference: GRPS Ex EE; Vrugink, Vol VIIA, pp 1072-1075; GRPS Ex JJ.

10. On the secondary level, in addition to its complete curriculum for high school students in grades 7 through 12 attending the four GRPS senior high schools and the five GRPS middle schools, the district also provides CETA youth employment programs in which 1,000 students participate, a four-phase driver's education program involving 2,800 participants, a park school designed to serve pregnant students, alternative high schools for those students who have been unable to succeed academically or behaviorally at their base school (450 participants), the Grand Rapids Job Corp Center, providing residential vocational educational training for youths (1,200 participants), the Junior ROTC (526 participants), City High, an alternative high school for highly motivated students (320 participants), and Educational Park, providing unique courses, special teachers and methods which involve some 2,500 participants.

Reference: GRPS Ex EE; Vrugink, Vol VIIA, pp 1075-1081; GRPS Ex JJ; GRPS Ex OOO; GRPS Ex PPP; GRPS Ex QQQ.

11. Consistent with the scope of the Philosophy of Education noted earlier, the GRPS sponsor a very large Community Education program which serves the various needs of the community by providing a vast array of educational services to approximately 35,000 students.

Reference: GRPS Ex EE; Vrugink, Vol VIIA, pp 1081-1088; GRPS Ex KKK.

12. The Community Education offerings are made available not only before and after the regular school day, but also during the evening hours, which offerings are provided at a variety of locations, no less than 260 in number, including factories, senior citizens centers, hospitals and public and non-public schools.

Reference: Vrugink, Vol VIIA, p 1083; GRPS Ex KKK, p 27; Young, Vol VIIIA, p 1317.

13. The GRPS also provides a variety of special programs, such as Grasp, a summer correspondence program in math and reading (3,077 participants); Community Child Watch, a program designed to further and promote child safety to and from school; a bilingual program, meeting the needs of non-English speaking children (350 participants); and an exhibit loan service, providing short-term loans of mounted specimens and kits in cooperation with the Grand Rapids Museum (55,000 participants).

Reference: GRPS Ex EE; Vrugink, Vol VIIA, pp 1089-1092.

14. The GRPS, in cooperation with the city of Grand Rapids, is also involved in the Recreation Department providing leisure and avocational activities for children, adults and the elderly of the city of Grand Rapids.

Reference: GRPS Ex EE; Vrugink Vol VIIA, pp 1088-1099.

15. The GRPS in the field of special education, provides no less than 32 separate programs for children with physical, mental or emotional disabilities, which programs provide absolutely essential services to no less than 10,000 participants.

Reference: GRPS Ex EE.

16. The GRPS is also involved in providing college level courses through Grand Rapids Junior College.

Reference: GRPS Ex EE.

B. Shared Time/Community Education

17. The Shared Time and Community Education programs of the GRPS, offered on leased premises and elsewhere, represent additional educational programs which are offered to the community, consistent with the district's commitment to providing a wide range of educational experiences for the benefit of the students of the total community.

Reference: GRPS Ex EE; Pojeski, Vol VA, pp 895, 901-903; Vrugink, Vol VIIA, pp 1071-1091, 1097; Int. Ex A, Tab C, ¶16.

C. Statistics

18. The total operating budget for the GRPS for the school year 1981-1982 is just under One Hundred and Twelve Million dollars (\$112,000,000.00).

Reference: GRPS Ex FF; Vrugink, Vol VIIA, p 1092.

19. The budget for the daytime portion of the Shared Time program (during regular school hours) is \$1,923,000 or 1.7% of the total operating budget for the district.

Reference: GRPS Ex FF.

20. The Community Education portion of the Shared Time program (on leased premises) in the before school, after school and evening program, is \$926,000, or 0.9% of the total operating budget for the district.

Reference: GRPS Ex FF.

21. In the GRPS district there are 42 elementary schools, 5 middle schools and 4 high schools, all of which are depicted by location on GRPS Ex JJ, a map of the city of Grand Rapids.

Reference: GRPS Ex JJ.

22. The GRPS provide elementary instruction to just over 14,000 full-time students.

Reference: GRPS Ex TTT, p 4.

23. On the high school level, the GRPS provide teaching instruction to just over 6,000 full-time students, and on the middle school level, to approximately 3,500 full-time students.

Reference: GRPS Ex TTT, p 5.

24. The total enrollment for the GRPS as of the 4th Friday count on October 2, 1981, was 26,142 full-time students, in the kindergarten through 12th grade programs.

Reference: GRPS Ex TTT, p 9; Vruggink, Vol VIIA, p 1121.

III. Shared Time

A. Definition

25. The Shared Time program consists of GRPS course offerings (following a GRPS curriculum) for youngsters which

are supplemental (i.e., noncore curriculum) and secular in nature, taught by subject area specialists.

Reference: Vruggink, Vol VIIA, pp 1097, 1101; GRPS Ex LL; GRPS Ex MM; GRPS Ex BB; GRPS Ex OO; GRPS Ex PP; GRPS Ex RR; GRPS Ex QQ; GRPS Ex TT; GRPS Ex SS; GRPS Ex Y, ¶13; GRPS Ex AA, ¶13; GRPS Ex BB, ¶9; GRPS Ex Q, ¶14; GRPS Ex J, ¶17; GRPS Ex B, ¶14.

26. The Shared Time program is a child benefit program designed to help students by providing supplementary, secular educational opportunity.

Reference: Bylsma, Vol VIIIB, pp 1388-1393; Pojeski, Vol VA, pp 895, 901-903; GRPS Ex FFF; GRPS Ex III, ¶5; Cichewicz, Vol IIA, p 306; Vruggink, Vol VIIA, pp 1097-1098; Young Vol VIIIA, p 1325; Dwyer, Vol IVA, pp 681, 693; Mish, Vol IA, p 68; Jaksa, Vol IVA, pp 734-735; Gritter, Vol IIIA, p 462; Wagner, Vol IIIA, pp 504, 519-520, Vol IIIB, p 556; Prong, Vol VIIIB, p 1253; GRPS Ex B, ¶18; GRPS Ex C, ¶17; GRPS Ex D, ¶16; GRPS Ex E, ¶¶10, 18; GRPS Ex F, ¶¶19, 20; GRPS Ex H, ¶16; GRPS Ex I, ¶11; GRPS Ex K, ¶¶9, 11, 17; GRPS Ex L, ¶23; GRPS Ex M, ¶9; GRPS Ex N, ¶16; GRPS Ex!, ¶¶14, 23; GRPS Ex R, ¶27; GRPS Ex T, ¶26; GRPS Ex W, ¶¶16, 23; GRPS Ex Z, ¶16; GRPS Ex BB, ¶¶18, 20; GRPS Ex CC, ¶21; GRPS Ex DD, ¶21; Int Ex A, Tab B, ¶¶6, 7, 8; Int Ex A, Tab C, ¶16; Int Ex A, Tab D, ¶16; Int Ex A, Tab E, ¶11; Int Ex A, Tab F, ¶¶8, 9, 10, 11; Int Ex A, Tab G, ¶14; Int Ex A, Tab H, ¶¶5, 6, 7, 12; Int Ex A, Tab I, ¶¶5, 9; Int Ex A, Tab M, ¶¶7, 10.

27. The Board of Education of the GRPS decided to provide the course offerings in the Shared Time program because such offerings were consistent with the overall educational philosophy of the district, and further because the Grand Rapids community is a unique community in which there

are a large number of families who choose to send their children to nonpublic schools, and these children have educational needs which the Board, through the operation of the Shared Time program, attempts to meet.

Reference: Pojeski, Vol VA, pp 8^{cc} 901-903; Vruggink, Vol VIIIB, pp 1097-1098, 1123, 1147, 1198; Int Ex A, Tab B, ¶7.

28. The term "Shared Time" refers not only to the sharing of the GRPS teachers, but also the sharing of the nonpublic school students, and their time as part-time public school students.

Reference: Vruggink, Vol VIIA, p 1097.

B. History

29. The Shared Time program in its present form started in 1976 and came about following certain decisions handed down by the Michigan Supreme Court and the Michigan Court of Appeals upholding the constitutionality of shared time instruction on leased premises under conditions of public school control.

Reference: Vruggink, Vol VIIA, p 1098.

C. Course Offerings

30. Through the Shared Time instructional program, the GRPS provide educational services in the areas of art, math (remedial and enrichment only), music, physical education, reading (remedial, developmental and enrichment only), educational park, industrial arts, and outdoor education.

Reference: GRPS Ex GG.

31. The number of educational services provided through

the Shared Time program has not significantly increased in the past four years.

Reference: Mish Vol IA, p 81; Boss Vol IVA, p 643; Dwyer, Vol IVA, p 677; Johnson, Vol VA, pp 842-843; Plaintiffs' Ex 90, Answer 64.

32. The secular educational opportunities provided by the Shared Time program represent courses which are supplementary to the core curriculum of the nonpublic schools which have students participating in the program.

Reference: Mish Vol IA, pp 69-70, Vol IB, pp 179-180, 187; Jaksa, Vol IVA, p 728; Vruggink, Vol VIIA, pp 1097, 1100, 1101, 1106, 1107; Cichewicz, Vol IIA, p 307; Gritter, Vol IIIA, p 442; Kroon Vol VIIIB, p 1205-1206; Int Ex A, Tab B, ¶7; Int Ex A, Tab D, ¶6; Int Ex A, Tab M, ¶8; Int Ex A, Tab N, ¶5; GRPS Ex B, ¶¶13, 14; GRPS Ex E, ¶10; GRPS Ex F, ¶12; GRPS Ex G, ¶20; GRPS Ex I, ¶11; GRPS Ex K, ¶¶11, 17; GRPS Ex L, ¶11; GRPS Ex N, ¶10; GRPS Ex BB, ¶13; GRPS Ex DD, ¶11; GRPS Ex C, ¶12.

33. The elementary nonpublic schools in the city of Grand Rapids whose children participate in the instructional offerings of the Shared Time program, have complete core curriculums outside of the course offerings made available through the Shared Time program.

Reference: Mish Vol IA, p 69, Vol IB, pp 184, 186, 187; Gritter, Vol IIIA, p 480; Jaksa, Vol IVB, p 728; Johnson, Vol VA, pp 833, 847; Int Ex A, Tab A, ¶¶6, 11; Int Ex A, Tab B, ¶7; Int Ex A, Tab C, ¶6; Int Ex A, Tab D, ¶6; Int Ex A, Tab G, ¶9; Int Ex A, Tab N, ¶9; Ex 1-7, 11, 18, 21-24, 46-58.

34. The courses made available through the Shared Time program on the elementary level would not otherwise be avail-

able in any of the nonpublic schools who have children now participating in the program.

Reference: Mish, Vol IB, pp 179-180; Cichewicz, Vol IIA, p 306; Dwyer, Vol IVA, pp 689, 693, 698; Johnson, Vol VA, pp 844, 845; Mirandette, Vol VIIIA, pp 1306, 1313, 1314; Int Ex A, Tab B, ¶¶6, 7; Int Ex A, Tab D, ¶16; Int Ex A, Tab E, ¶12; Int Ex A, Tab G, ¶14; Int Ex A, Tab H, ¶12; Int Ex A, Tab I, ¶9; Int Ex A, Tab K, ¶¶8, 9; Int Ex A, Tab L, ¶¶3, 4; Int Ex A, Tab M, ¶¶9, 10; GRPS Ex I, ¶11; GRPS Ex J, ¶18; GRPS Ex N, ¶10; GRPS Ex R, ¶27; GRPS Ex W, ¶16; GRPS Ex Z, ¶16; GRPS Ex BB, ¶13.

35. The course offerings made available through the Shared Time program do not serve as a substitute for any portion of the base curriculum of any of the elementary nonpublic schools who have children now participating in the Shared Time program.

Reference: Mish, Vol IB, pp 179-180, 186; Dwyer, Vol IVA, p 689; Johnson, Vol VA, pp 843-844; Jaksa, Vol IVB, p 728; Kroon, Vol VIIB, p 1206; Rowlands, Vol VIIB, pp 1269-1270; Int Ex A, Tab B, ¶7; Int Ex A, Tab D, ¶16; Int Ex A, Tab G, ¶14; Int Ex A, Tab H, ¶12; Int Ex A, Tab I, ¶9; Int Ex A, Tab K, ¶¶8, 9; Int Ex A, Tab L, ¶¶3, 4; GRPS Ex K, ¶11; GRPS Ex N, ¶10; GRPS Ex Q, ¶14; GRPS Ex U, ¶12; GRPS Ex BB, ¶13; GRPS Ex DD, ¶11.

36. None of the Shared Time course offerings on the elementary level are required either for graduation or successful progression from grade level to grade level.

Reference: Mish, Vol IB, pp 184, 186, 187; Johnson, Vol VA, pp 842, 843, 854; Jaksa, Vol IVA, pp 727-728; Vrugink, Vol VIIA, pp 1150-1152, 1159-1161; Int Ex A, Tab M, ¶18.

37. The percentage of time any given student receives

Shared Time instruction is a very small portion of that student's total educational experience, as evidenced by the testimony of Sister Mish at IHM to the effect that less than 10% of a given student's time would be spent in Shared Time instruction.

Reference: Mish, Vol IB, p 183; Wagner, Vol IIIB, pp 583-584; Johnson, Vol VA, pp 848-849.

38. Typically, Shared Time courses do not meet on a daily basis. Also, not all part-time public school students participate in every Shared Time course offering.

Reference: Mish, Vol IB, pp 181-182, 185; Johnson, Vol VA, pp 848-849; Wagner, Vol IIIB, pp 583-584.

39. In the 1981-1982 school year, students attending 45 nonpublic schools receive the educational benefits conferred by the operation of the Shared Time program.

Reference: Plaintiff's Ex 90, Answer 74; GRPS Ex JJ.

40. All of the course offerings made available to part-time public school students through the Shared Time program are likewise made available to full-time public school students in the city of Grand Rapids.

Reference: Chicewicz, Vol IIA, p 317; Vrugink, Vol VIA, pp 985-987; Vrugink, Vol VIA, p 1032.

41. No one nonpublic school is favored in the Shared Time and Community Education programs. All nonpublic schools have the opportunity to have their students participate in the programs.

Reference: Vrugink, Vol VIIA, pp 1161-1162.

42. There is no planned or anticipated expansion of the types of course offerings made available to students through the Shared Time program.

Reference: Pojeski, Vol VA, p 987; Vrugink, Vol VIIA, p 1104.

1. Math

43. The subject area supervisor for the GRPS Shared Time math program is Mr. William Oosse, assisted by Ms. Elsa Geskus.

Reference: GRPS Ex J, ¶¶1, 14; GRPS Ex HH.

44. In his capacity as subject area supervisor, Mr. Oosse is responsible for supervising the K through 12th mathematics program which includes responsibility for leading curriculum meetings, teacher in-service training sessions, staff evaluations, staff school assignments, and the orientation of Shared Time math instructors.

Reference: GRPS Ex J, ¶¶13, 16.

45. The math curriculum for the GRPS, including Shared Time mathematics, is discussed in detail in the Mathematics Performance Objectives (kindergarten through 6th grade) and the Mathematics Performance Objectives (grades 7 and 8).

Reference: GRPS Ex BBB.

46. Remedial mathematics on the elementary level provides students who are considerably behind their grade level with concentrated work in basic skills. Small groups of students are selected by the GRPS teachers to work on such things as addition, subtraction, multiplication or division. These groups generally meet once or more per week. It is anticipated that such remediation work will assist the students to more successfully participate in their regular math curriculum.

Reference: GRPS Ex J, ¶17; GRPS Ex L, ¶11; Int Ex A, Tab D, ¶¶4, 5.

47. The primary difference between remedial mathematics and core curriculum mathematics is that the former, in small group sessions, focuses more on the diagnostic evaluation of specific math deficits and the prescription of a course of study specifically designed to correct such deficits for individual students.

Reference: Vrugink, Vol VIIa, pp 1152-1153.

48. The objectives of the remedial mathematics program are spelled out in detail in the GRPS Mathematics Objectives booklets.

Reference: GRPS Ex J, ¶17; GRPS Ex BBB.

49. Enrichment mathematics provides talented students with advanced work not otherwise available in their core curriculum.

Reference: GRPS Ex J, ¶17.

50. The objectives in the enrichment portion of the math program are established by the Shared Time teacher and the GRPS math coordinator in order to meet the educational needs of identified and eligible students.

Reference: GRPS Ex J, ¶17.

51. The specific aim of the Shared Time mathematics program is to identify and meet the educational needs of eligible children who can benefit from the types of instruction made available through the program. This objective is achieved in part by focusing on low pupil/teachers ratio (math specialist), as well as the provision of additional concentration on basic skill objectives.

Reference: GRPS Ex J, ¶17.

52. The Shared Time mathematics program is designed and

intended to benefit children by providing supplementary, secular, noncore math instruction by math specialists.

Reference: GRPS Ex J, ¶17; GRPS Ex K, ¶11.

53. On the high school level, the Shared Time instructional program provides a course in math topics for eligible students.

Reference: GRPS Ex M, ¶9.

54. The ninth grade math topics course focuses upon such things as positives and negatives, fractions and decimals, pre-Algebra (basic equation operations), ratios and proportions and percents. The tenth grade program focuses upon consumer math involving study in the following areas: the use of a calculator, banking matters (i.e., checking accounts, savings accounts, interest, loans, etc.), geometry, and the metric system.

Reference: GRPS Ex M, ¶9.

55. Math topics is a course in remedial mathematics for secondary students.

Reference: GRPS Ex M, ¶9; Chesle, Vol IIA, pp 252, 263, 264.

56. The math topics program is specifically designed to assist students who are not able to function successfully in the core math curriculum provided on the secondary level.

Reference: Chesle, Vol IIA, p 264.

57. As was true on the elementary level, secondary level remedial mathematics focuses on small groups and concentrates on individual needs.

Reference: Chesle, Vol IIA, p 263.

58. On the secondary level, the nonpublic schools whose students now participate in the math topics program did not have, as part of their core curriculum, a math topics course similar to the type of instruction now available through the GRPS.

Reference: Chesle, Vol IIA, pp 259-260, 264; Hollern, Vol IIIB, p 620.

59. The curriculum utilized for the math topics program is the same as that utilized by the GRPS in all of the public school high schools.

Reference: Chesle, Vol IIA, p 62, 274.

60. On the elementary level, none of the nonpublic schools who have students participating in the Shared Time program ever provided remedial or enrichment mathematics similar to the type of instruction now available through the GRPS.

Reference: Mish Vol IB, p 179; Dwyer, Vol IVA, p 687; see also citations, ¶¶34, 35, *supra*.

61. The Shared Time math program provided by the GRPS is not required by the state of Michigan either as a course offering or as a prerequisite for graduation.

Reference: Vrugink, Vol VIIA, p 1152; see also citations, ¶36, *supra*.

62. There are presently 20 nonpublic schools which have students participating in the math offerings made available through the GRPS Shared Time program.

Reference: Young, Vol VIIIA, p 1323.

63. There are 2,167 part-time GRPS students who presently benefit from the operation of the Shared Time math program.

Reference: GRPS Ex GG.

64. There are 17 teachers now employed by the GRPS providing instruction in the Shared Time math program.

Reference: GRPS Ex HH.

65. Religion has nothing to do with the providing of math services.

Reference: GRPS Ex M, ¶15.

2. Reading

66. The supervisor of the reading program is Ms. Elizabeth L. Rowlands (a/k/a Betty Rowlands), who has been responsible for supervising the Shared Time reading program since 1979.

Reference: GRPS Ex B, ¶8.

67. In her capacity as subject area supervisor, Ms. Rowlands is responsible for the development of district curriculum, staff assignment, supervision and evaluation, material supply purchases, development of in-service programs for staff, attending staff meetings (see GRPS Ex KK), administering department budget, interviewing and recommending candidates and assisting teachers, principals and parents who are concerned about the special needs of students.

Reference: GRPS Ex B, ¶¶7, 10; Rowlands, Vol VIIB, p 1260.

68. The Shared Time reading program is designed to provide support services to students in addition to the core reading instruction provided by nonpublic school classroom teachers. The three types of services provided through the program are based upon the GRPS Reading Performance Objectives (GRPS Ex LL and Ex MM). There are three types of services offered through the Shared Time reading program:

a. *Remedial:* For students reading below grade level, diagnostic tests are administered to ascertain skill deficiencies. Once skill deficiencies are identified, materials are purchased, developed, or borrowed from the Reading Department or Instructional Media Center of the GRPS to assist GRPS teachers in providing specific skill instruction. Students who thereafter make sufficient progress are dismissed from such classes.

b. *Developmental:* This program is designed for students reading on or about grade level who demonstrate difficulty in mastering new concepts/skills or who need more opportunity for instruction/practice to master skills. As above, diagnostic testing is administered by the Shared Time reading specialist to identify areas of need. Once those areas are identified, materials are secured through the channels noted above, and instruction begins.

c. *Enrichment:* This program is designed for students reading above grade level who demonstrate the potential for increased achievement. The objectives are to challenge the excellent reader in such areas as vocabulary study, literature, discussion groups, advanced study skills, newspaper/magazine reading, and library/reference work skills. Units of study are developed and/or commercial materials are secured by the GRPS to assist the GRPS specialist in providing enrichment experiences.

Reference: GRPS Ex B, ¶14; Rowlands, Vol VIIB, pp 1259-1260; GRPS Ex C, ¶7; GRPS Ex D, ¶10; GRPS Ex E, ¶10; see citations, ¶32.

69. The reading program follows the objectives of the GRPS and uses a wide variety of supplementary materials found in the public schools to accomplish those objectives.

Reference: GRPS Ex B, ¶15.

70. The entire reading program is designed to benefit students and to increase their potential academic success.

Reference: GRPS Ex B, ¶18; GRPS Ex E, ¶10.

71. Presently, students in attendance at 25 nonpublic schools receive Shared Time reading instruction.

Reference: GRPS Ex B, ¶10; Young, Vol VIIIA, p 1323.

72. There are presently 4,280 part-time GRPS students receiving the benefits conferred as a result of the operation of the Shared Time reading program.

Reference: GRPS Ex GG.

73. The GRPS employs 31 specialists who spend at least a portion of their time providing reading services through the Shared Time reading program.

Reference: GRPS Ex HH.

74. All full-time reading specialists are assigned to a number of different schools, both leased premises and other GRPS sites.

Reference: GRPS Ex C, ¶1; GRPS Ex E, ¶1; GRPS Ex F, ¶1; GRPS Ex G, ¶1; GRPS Ex I, ¶1.

75. Reading specialists are periodically reassigned on a rotating basis to different school sites by the reading supervisor, Ms. Betty Rowlands.

Reference: Barth, Vol VIIB, p 1223.

76. The reading services provided through the GRPS are provided over and above the core curriculum in reading provided by the nonpublic school classroom teachers, and are thus supplementary.

Reference: Kroon, Vol VIIB, p 1206; GRPS Ex C, ¶12; GRPS Ex D, ¶10; GRPS Ex E, ¶10; GRPS Ex I, ¶11; and see citations, ¶32.

77. The nonpublic schools which now have students participating in the Shared Time program did not provide remedial, developmental or enrichment reading services prior to the secular, educational services made available through the GRPS.

Reference: Mish Vol IB, pp 179-180; Dwyer, Vol IVA, p 687; and see citations, ¶34.

78. The primary difference between a remedial reading program and a core reading program is that a remedial program, in small groups or on an individual basis, focuses upon the diagnosis of specific reading deficiencies, and the prescription of a specified course of instruction to correct those deficiencies. Unlike the sequential instruction involved in the core curriculum, the diagnostic and prescriptive aspects of the remedial program focus upon individual needs, and the most effective means which can be used to meet those needs.

Reference: Vrugink, Vol VIIA, pp 1151-1152.

79. Remedial, developmental and/or enrichment reading are not required for graduation from any school, nor are they required by the state of Michigan to be offered by any school.

Reference: Vrugink, Vol VIIA, p 1151.

80. Religion has nothing to do with the providing of reading services.

Reference: Rowlands, Vol VIIB, pp 1267-1269.

81. The GRPS specialists involved in the Shared Time reading program are encouraged to interact with nonpublic school classroom teachers in order to provide the most effective

support services possible, to assist students in either overcoming reading difficulties, or in benefiting the most from the enrichment opportunities made available through the public schools.

Reference: Rowlands, Vol VIIB, pp 1265-1266, 1270.

82. The curriculum and materials which are used in the Shared Time program are those which are used in the other public schools of the district.

Reference: Barth, Vol VIIB, p 1226.

3. Music

83. The subject area supervisor for the GRPS music program is Mr. Doug Reahm.

Reference: GRPS Ex HH; GRPS Ex Y, ¶1.

84. In that capacity, Mr. Reahm is responsible for the preparation and administration of the Music Department Budget; the purchasing of supplies and materials; the interviewing of prospective staff; teacher evaluation, supervision and assignment; and the arrangements for staff in-service training sessions.

Reference: GRPS Ex Y, ¶3.

85. The purpose of the Shared Time music program is to give students a broad, general background in the discipline and the art of music. Study of singing, musical instruments, listening, music reading and movement activities are an integral part of the program at the elementary level. The secondary level program in junior high is aimed at a continuation of the general music program and also may include some performance groups. The senior high program is essentially a music performance oriented program.

Reference: GRPS Ex Y, ¶12; GRPS Ex Z, ¶16.

86. The music program for grades kindergarten through 12th focuses on vocal, as opposed to instrumental music. The elementary program is prescribed by a set of elementary objectives which were adopted in June of 1979 and which are made available to each music specialist participating in the program. (See GRPS Exhibit QQ.) In the secondary program, the Board is in the process of developing objectives and has prepared a preliminary draft which has been in the hands of all music specialists since the Fall of 1980. (See GRPS Exhibit RR.)

Reference: GRPS Ex Y, ¶¶10-11.

87. There are students attending 26 nonpublic schools presently participating in the Shared Time music program.

Reference: Young, Vol VIIIA, p 1323.

88. There are presently 4,222 part-time GRPS students who receive and benefit from the educational services made available through the Shared Time music program.

Reference: GRPS Ex GG.

89. The GRPS employ 12 music specialists who spend at least a portion of their time providing teaching services in the GRPS Shared Time music program.

Reference: GRPS Ex HH.

90. All music specialists are assigned to a number of different schools, both leased premises and other GRPS sites.

Reference: GRPS Ex Z, ¶7; GRPS Ex AA, ¶8.

91. The nonpublic schools which have children attending the Shared Time music program did not have, in many in-

stances, a music program prior to the initiation of the program made available through the GRPS.

Reference: Mish Vol IB, p 180; Dwyer, Vol IVA, p 689; GRPS Ex Y, ¶12; Int Ex A, Tab K, ¶9; Schedule A, ¶5.

92. Where nonpublic schools did provide some type of music instruction, such instruction was generally provided by the classroom teacher on a sporadic basis. In contrast, the instruction provided by the GRPS is taught by a music specialist, utilizing a unit-by-unit, sequential curriculum in music.

Reference: Dwyer, Vol IVA, p 687; GRPS Ex QQ; GRPS Ex RR; Int Ex A, Tab B, ¶¶6, 7; Int Ex A, Tab N, ¶9.

93. The state of Michigan neither requires music as a prerequisite for graduation from any school, nor does it require any school to offer music.

Reference: Vrugink, Vol VIIA, p 1150.

94. The music curriculum taught in the Shared Time program does not in any way differ from the curriculum taught at other public school sites. The content of what is taught and the materials and supplies used to provide such services are identical in either setting.

Reference: GRPS Ex Y, ¶¶13-14; GRPS Ex Z, ¶16; GRPS Ex AA, ¶13.

4. Art

95. The GRPS Art supervisor is Ms. Vee Matusko.

Reference: GRPS Ex BB, ¶1; GRPS Ex GG.

96. As supervisor, Ms. Matusko is responsible for administering the Art Department budget; assignment supervision and evaluation of the art teaching staff; developing and

presenting in-service/workshops for the teaching staff; interviewing and recommending art candidates for available positions; and developing and refining the GRPS art curriculum.

Reference: GRPS Ex BB, ¶7.

97. The curriculum provided in the art program is summarized in detail in Exhibits TT and SS.

Reference: GRPS Ex TT; GRPS Ex SS.

98. The purpose of the art program is to provide an opportunity for a "total education", one which enables children to experiment with their own individuality and creativity.

Reference: GRPS Ex BB, ¶18.

99. The art program is designed to benefit students.

Reference: GRPS Ex BB, ¶20.

100. In the words of teacher Strand, "My function, as I perceive it in teaching art to public school students or any students, is to keep children's curiosity and imagination alive. As much as I can I try to keep alive that part of their brain which is normally dulled by the learning-answer stuff. Also I try to teach them to look and see, to feel better about themselves and their individual awareness, to feel good about themselves and that they can make something out of themselves. I try to teach them to respect each other's creativity. I am teaching them to appreciate the beauty in the world."

Reference: GRPS Ex CC, ¶15.

101. The Shared Time art program follows the GRPS art curriculum. In terms of course content and the materials/supplies which are used in the provision of such art services, there is no difference between the art instruction provided in Shared Time classrooms and in other public school classes.

Reference: GRPS Ex BB, ¶¶9, 19; GRPS Ex LL, ¶16; GRPS Ex DD, ¶10.

102. There are students attending 28 nonpublic schools presently participating in the art program provided through the GRPS.

Reference: Young, Vol VIIIA, p 1323.

103. The GRPS employ 16 art specialists who spend at least a portion of their time providing educational services to children on leased premises.

Reference: GRPS Ex HH.

104. All art specialists are assigned to a number of different schools, both on leased premises and other GRPS sites.

Reference: GRPS Ex CC, ¶1; GRPS Ex DD, ¶1.

105. In the 1981-1982 school year, there are 5,101 part-time GRPS students who are receiving art instruction through the GRPS Shared Time art program.

Reference: GRPS Ex GG.

106. Although some of the nonpublic schools in the city may have provided "art instruction", such instruction was generally provided by the classroom teacher on a sporadic basis. In contrast, the instruction which is provided by a GRPS art specialist utilizes a sequential, unit-by-unit course of study in the field of art.

Reference: Mish Vol IB, p 180; Dwyer Vol IVA, p 687; Johnson, Vol VA, p 829; GRPS Ex TT; GRPS Ex SS; Int Ex A, Tab K, ¶9; Schedule A, ¶3.

107. The state of Michigan neither requires art as a pre-

requisite for graduation from any school, nor does it require any school to offer art.

Reference: Vrugink, Vol VIIA, p 1151.

5. Physical Education

108. Joe Leonardo and Arlene Wagner are the subject area supervisors (Assistant Directors of Athletics and Physical Education) for the GRPS Physical Education program.

Reference: Mirandette, Vol VIIIA, p 1304; GRPS Ex Q, ¶1; Leonardo, Vol VIA, p 1038.

109. The subject area supervisors in the Physical Education Department are responsible for the development and operation of the physical education curriculum; the assignment, supervision and evaluation of teaching staff; developing and presenting in-service training programs for staff; interviewing and recommending candidates for available positions; and developing and refining the physical education curriculum of the district.

Reference: GRPS Ex Q, ¶¶7, 8.

110. The purpose of the GRPS physical education program is to provide a multi-faceted service to children. The public school curriculum for the physical education program is described in detail in the Elementary Physical Education Curriculum guide (GRPS Exhibit PP) and the Senior High School Physical Education Minimal Performance Objectives and Instructional Units (GRPS Exhibit OO).

Reference: GRPS Ex Q, ¶14.

111. The philosophy of the GRPS with regard to the physical education offerings of the Shared Time program is that physical education represents a part of the educational process

which enhances the psychological, intellectual and social, as well as physical development of the individual in our society.

Reference: GRPS Ex Q, ¶15; GRPS Ex R, ¶9.

112. On the lower elementary level, the instruction provided through the Shared Time program focuses upon body awareness, body mechanics, spatial awareness, gross motor and locomotor skills, and self-testing rhythm activities. In the second and third grade, those concepts are expanded and initial instruction is provided regarding basic sport skills. From grade 4 on, there is a progression of instruction concerning sport skills and knowledge appropriate for each grade level, which eventually leads to sport instruction, i.e., football, soccer, volleyball, basketball, etc. There is a considerable emphasis placed on rhythms and physical fitness activities.

Reference: GRPS Ex F, ¶11; GRPS Ex PP; GRPS Ex OO; GRPS Ex Q, ¶16.

113. The curriculum provided in the Shared Time physical education program is that of the GRPS. Shared Time specialists provide the same instruction whether teaching on leased premises or at other public school sites.

Reference: GRPS Ex Q, ¶14; GRPS Ex R, ¶11; GRPS Ex S, ¶10; GRPS Ex T, ¶¶7, 25; GRPS Ex U, ¶12; GRPS Ex W, ¶12.

114. There are presently 8,885 part-time GRPS students receiving benefits as a result of the operation of the Shared Time physical education program.

Reference: GRPS Ex GG.

115. There are students attending 33 nonpublic schools presently participating in the physical education portion of the Shared Time program.

Reference: Young, Vol VIIIA, p 1323.

116. The GRPS employ 31 specialists who spend at least a portion of their time providing teaching instruction in the Shared Time physical education program.

Reference: GRPS Ex HH.

117. All physical education specialists have a number of different schools to which they have been assigned, both on leased premises and other public school sites.

Reference: GRPS Ex R, ¶1; GRPS Ex S, ¶1; GRPS Ex T, ¶1; GRPS Ex U, ¶1.

118. On the elementary level, many of the nonpublic schools with children now participating in the program never had a physical education program.

Reference: Mish Vol IB, p 180; Mirandette, Vol VIIIA, pp 1306, 1313, 1314; Int Ex A, Tab B, ¶¶6, 7; Int Ex A, Tab K, ¶9; Schedule A, ¶4; GRPS Ex U, ¶12.

119. In other nonpublic elementary schools, if teaching instruction was provided in the physical education area, such instruction was provided by the classroom teacher on a sporadic basis. In contrast, the GRPS provides a unit-by-unit, sequential curriculum in the field of physical education.

Reference: Dwyer, Vol IVA, p 687; Johnson, Vol VA, pp 827-828, 844; Int Ex A, Tab K, ¶9; Schedule A, ¶4; Int Ex A, Tab L, ¶3; Int Ex A, Tab M, ¶9.

120. The legislature has not required a course in physical education as a condition for graduation from any school.

Reference: Vrugink, Vol VIIA, p 1150.

121. Religion has nothing to do with the provision of physical education instruction.

Reference: GRPS Ex R, ¶21; GRPS Ex S, ¶12.

6. Industrial Arts

122. The GRPS Industrial Arts program is supervised by Mr. Barry Boyer. His responsibilities include supervising and evaluating the three Shared Time, industrial arts teachers.

Reference: GRPS Ex HH.

123. Industrial arts is a GRPS program provided on the secondary level in all GRPS high schools and on leased premises in two nonpublic high schools (West Catholic and Christian High). 322 part-time GRPS students receive industrial arts instruction through the Shared Time program.

Reference: GRPS Ex GG; Plaintiffs' Ex 90, Answer 79.

124. The curriculum provided through the GRPS industrial arts Shared Time program is substantively different from that provided previously by the nonpublic schools.

Reference: Visser, Vol VA, p 873.

125. The instruction provided through the industrial arts program is noncore.

Reference: Vruggink, Vol VIIA, pp 1106-1107.

126. Industrial arts is not required for graduation. It represents an elective course which students may take, should they wish to do so.

Reference: Visser, Vol VA, p 877.

D. Location

127. All of the instruction still in issue provided by the GRPS through the Shared Time (during regular school day) and Community Education (before/after school) programs takes place in classrooms which are leased by the GRPS.

Reference: Mish, Vol IA, p 48; Chesle, Vol IIA, pp 253,

266; Gritter, Vol IIIA, p 460; Dwyer, Vol IVA, p 677; Jaksa, Vol IVA, p 732; Vruggink, Vol VB, p 921; GRPS Ex HHH; Sandee, Vol IB, p 243; Cichewicz, Vol IIA, p 301; Wagner, Vol IIIA, pp 525, 534, 537-540, 559; Hollern, Vol IIIA, p 618; Penny, Vol IVB, p 791; Kroon, Vol VIIB, p 1205; Mirandette, Vol VIIIA, p 1312; Young, Vol VIIIA, pp 1353, 1366, 1367; Farr Stipulation on record, Vol VIIIA, p 1368; GRPS Ex B, ¶¶13, 24; GRPS Ex C, ¶¶9, 10; GRPS Ex D, ¶8; GRPS Ex E, ¶9; GRPS Ex F, ¶9; GRPS Ex I, ¶10; GRPS Ex J, ¶28; GRPS Ex K, ¶16; GRPS Ex M, ¶8; GRPS Ex N, ¶¶9, 10; GRPS Ex Q, ¶22; GRPS Ex R, ¶26; GRPS Ex S, ¶¶7, 8, 15; GRPS Ex T, ¶18; GRPS Ex U, ¶14; GRPS Ex W, ¶¶10, 14; GRPS Ex Y, ¶21; GRPS Ex Z, ¶10; GRPS Ex AA, ¶16; GRPS Ex BB, ¶¶11, 16; GRPS Ex DD, ¶17; Int Ex A, Tab B, ¶5; Int Ex A, Tab C, ¶13; Int Ex A, Tab D, ¶7; Int Ex A, Tab G, ¶13; Int Ex A, Tab M, ¶4; Int Ex A, Tab N, ¶3; Stipulations, Vol IA, p 47.

128. This year (i.e., 1981-1982) the GRPS paid in excess of \$200,000 in rent for such leased facilities.

Reference: Vruggink, Vol VB, p 920.

129. During such instruction, leased rooms are public school classrooms under the jurisdiction and control of the GRPS.

Reference: Mish, Vol IB, p 147; Gritter, Vol IIIA, p 458; Dwyer, Vol IVA, p 677; Int Ex A, Tab B, ¶5; Int Ex A, Tab C, ¶13; Int Ex A, Tab G, ¶13; Int Ex A, Tab M, ¶14; Int Ex A, Tab N, ¶13; GRPS Ex B, ¶24; GRPS Ex E, ¶9; GRPS Ex J, ¶28; GRPS Ex Q, ¶22; GRPS Ex S, ¶7; GRPS Ex T, ¶18; GRPS Ex U, ¶8.

130. Except for the six Christian schools for which one lease was executed, all of the remaining nonpublic schools have executed separate leases, in the same form as that identified as GRPS Exhibit HHH.

Reference: Gritter, Vol IIIA, p 456; Mish, Vol IA, pp 42-43; (Statement by Attorney Farr); Wagner, Vol IIIA, p 523.

131. At the present time the Board pays \$6.00 per class per week for elementary classroom space and \$10.00 per class per week for secondary classroom space.

Reference: Vruggink, Vol VB, p 920; Vruggink, Vol VIIB, p 1171.

132. The \$6.00 per class per week and the \$10.00 per class per week figures were chosen after a study of the costs and expenses which the public schools incur in their own buildings. The rental charges are fair and reasonably related to the actual costs of operation.

Reference: Vruggink, Vol VIIB, p 1171.

133. Rooms which are leased by the GRPS are clearly designated as such by the posting of an appropriate sign. A copy of the sign can be found by making reference to GRPS Exhibit EEE.

Reference: GRPS Ex EEE; Chesle, Vol IIA, p 274; Gritter, Vol IIIA, p 460; Hollern Vol IIIB, p 618; Dwyer, Vol IVA, p 677; Dwyer Vol IVA, p 685; Dwyer, Vol IVA, p 690; Penny, Vol IVB, p 791; Barth, Vol VIIB, p 1240; Mirandette, Vol VIIIA, p 1312; GRPS Ex C, ¶10; GRPS Ex K, ¶16; GRPS Ex S, ¶15; GRPS Ex W, ¶10; GRPS Ex Z, ¶10; GRPS Ex AA, ¶16; GRPS Ex DD, ¶17.

134. The rooms which are leased by the GRPS for Shared Time purposes are free of religious symbols, artifacts, or anything else of a religious nature.

Reference: Mish, Vol IA, p 51; Chesle, Vol IIA, p 266; Penny, Vol IVB, p 792; Prong, Vol VIIB, p 1250; GRPS

Ex B, ¶24; GRPS Ex C, ¶10; GRPS Ex F, ¶¶13, 14; GRPS Ex G, ¶11; GRPS Ex J, ¶28; GRPS Ex W, ¶13; GRPS Ex Q, ¶22; GRPS Ex R, ¶25; GRPS Ex T, ¶¶9, 19; GRPS Ex U, ¶23; GRPS Ex Y, ¶21; GRPS Ex Z, ¶10; GRPS Ex AA, ¶17; Int Ex A, Tab C, ¶13; Int Ex A, Tab D, ¶7; Int Ex A, Tab E, ¶5; Int Ex A, Tab G, ¶13; Int Ex A, Tab H, ¶10.

135. The Shared Time program is provided onsite (i.e., leased premises) because (1) there is less cost if the program is offered at that location; (2) it is the philosophy of the GRPS school district to bring services to children, wherever they are; and (3) studies in the educational field on the issue of "time on task" have consistently concluded that onsite instruction, from an educational point of view, is far superior to offsite instruction.

Reference: GRPS Ex C, ¶15; GRPS Ex D, ¶13.

136. All teachers and administrators involved in the Shared Time program, as well as those not involved in the program, expressed the opinion generally that from an educational point of view, the most effective means of providing educational services is to provide such services onsite.

Reference: Mish, Vol IA, p 79; Mish, Vol IB, pp 159-160; Jaksa, Vol IVA, p 730; Vruggink, Vol VIA, pp 990-991; Vruggink, Vol VIIA, pp 1098-1099; GRPS Ex E, ¶14; GRPS Ex F, ¶21; GRPS Ex G, ¶18; GRPS Ex K, ¶13; GRPS Ex L, ¶16; GRPS Ex N, ¶12; GRPS Ex R, ¶16; GRPS Ex V, ¶16; GRPS Ex W, ¶19; GRPS Ex Z, ¶17; GRPS Ex AA, ¶15; GRPS Ex CC, ¶14; GRPS Ex DD, ¶16; Young, Vol VIIA, pp 1353, 1354; Int Ex A, Tab C, ¶15.

137. Although offsite instruction is available in some circumstances in the GRPS, such instruction is limited to those situations which require either a special facility or special equipment necessitating the utilization of offsite settings.

Reference: Vruggink, Vol VIA, p 1021; Wagner, Vol IIIB, p 553.

E. Students

138. The Shared Time program presently provides educational opportunities for somewhere between 10,000 and 11,000 children. These part-time GRPS students are the beneficiaries of the operation of the Shared Time program.

Reference: Vruggink, Vol VIIA, p 1121; GRPS Ex GG.

139. The classes which are conducted through the Shared Time program are open to all students, regardless of such students' school of primary attendance.

Reference: Gritter, Vol IIIA, p 462; Vruggink, Vol VB, p 925.

140. There have been instances in which students from other school buildings have attended Shared Time offerings on leased premises. For example, there have been students outside of the Christian High student body who have attended Shared Time classes held at Christian High on leased premises. There is no evidence in the record that any student desirous of attending a Shared Time class on leased premises was ever denied admission.

Reference: Gritter, Vol IIIA, p 453; Visser, Vol VA, pp 865-866.

141. Public school specialists have the ultimate and final authority as to which students attend Shared Time classes. The nonpublic school administrators do not have any control over that ultimate decision.

Reference: Chesle, Vol IIA, p 261; Dwyer, Vol IVA, p 692; Dwyer, Vol IVA, p 732; see also the references for ¶120.

142. Except for those instances in which a Shared Time specialist provides instruction for the entire class, the student selection process generally consists of independent testing by the GRPS of those students recommended or identified by non-public school classroom teachers. Following such testing, a determination is then made by the public school specialist as to whether or not any given child is eligible for and therefore permitted to attend the instructional services being offered by the GRPS.

Reference: Barth, Vol VIIB, p 1235; Barth, Vol VIIB, p 1236; Prong, Vol VIIB, p 1245; Barth, Vol VIIB, p 1224; Kroon, Vol VIIB, pp 1200-1202; Chesle, Vol IIA, pp 260-261; GRPS Ex B, ¶17; GRPS Ex C, ¶11; GRPS Ex D, ¶10; GRPS Ex E, ¶17; GRPS Ex F, ¶¶12, 15; GRPS Ex G, ¶¶12, 13; GRPS Ex J, ¶21; GRPS Ex K, ¶11; GRPS Ex L, ¶12; GRPS Ex M, ¶10; GRPS Ex N, ¶11.

143. The residence of a given student is not a factor which is considered in determining student eligibility for Shared Time instruction.

Reference: Gritter, Vol IIIA, p 465; Wagner, Vol IIA, p 525; Hollern, Vol IIIB, p 608; Vruggink, Vol VIA, p 1016.

144. Regarding student discipline procedures, the GRPS teachers testified that they either had no such problems, or, if they did, that such problems were handled without involving the nonpublic school administrators.

Reference: Penny, Vol IVB, p 795; GRPS Ex E, ¶17; Barth, Vol VIIB, p 1239.

145. If a child is suspended or expelled from his/her non-public school of primary attendance, such suspension or expulsion does not preclude that child from attending Shared Time classes inasmuch as such classes are under the jurisdic-

tion and control of the public schools, and not the nonpublic schools.

Reference: Mish, Vol IA, p 108.

146. As a practical matter, usually the students who attend Shared Time classes are otherwise enrolled in the nonpublic schools where the Shared Time instruction takes place on leased premises.

Reference: Mish, Vol IA, p 66; Mish, Vol IA, p 84; Zandee, Vol IB, pp 207-208; Chesle, Vol IIA, p 292; Cichewicz, Vol IIA, pp 305-306; Gritter, Vol IIIA, p 461; Hollern, Vol IIIB, p 588; Boss, Vol IVA, p 640; Dwyer, Vol IVA, p 679; Penny, Vol IVB, p 783; Visser, Vol VA, pp 865-866; Kroon, Vol VIIB, p 1214.

F. Teachers

147. There are presently 131 full time specialists employed by the GRPS providing teaching services in the Shared Time program, although many of them also spend a portion of their time teaching in the other public schools of the district.

Reference: Young, Vol VIIIA, p 1324.

148. Of those 131 contracted teachers, 13 were previously employed by nonpublic schools in the area.

Reference: Young, Vol VIIIA, p 1340.

149. Of those 13 teachers previously employed by nonpublic schools, three are presently employed by the GRPS teaching in subject areas different from the subject areas they were teaching in during such prior employment with the nonpublic schools.

Reference: Young, Vol VIIIA, p 1340.

150. Over 90% of the teachers presently teaching in the

Shared Time program have never been employed by any nonpublic school whose students are now receiving the benefits conferred by the operation of the Shared Time program.

Reference: Young, Vol VIIIA, p 1340.

151. At least one teacher indicated that the reason for switching from the nonpublic school system to the public school system was the fact that the salaries are higher in the public school system.

Reference: Chesle, Vol IIA, p 293.

152. In another instance (Mr. Visser), the Shared Time instructor, though previously employed by the nonpublic schools, was also previously employed by the GRPS on a part-time basis for 18 years.

Reference: Visser, Vol VA, pp 859-860.

153. Others, now employed by the public schools, have had their applications on file for many years prior to obtaining employment with the public schools.

Reference: Chesle, Vol IIA, pp 259, 269.

154. Shared Time teachers, as public school employees, are required to attend subject area in-service training programs and staff meetings, all of which are sponsored and held by the GRPS subject area supervisors.

Reference: Chesle, Vol IIA, pp 275, 286-287; Rowlands, Vol VIIB, p 1260; GRPS Ex KK.

155. Such meetings not only serve the function of keeping the teaching staff abreast of recent educational developments and opportunities, but also serve to provide a forum within which to reinforce orientation instructions regarding the rules which apply to the operation of the Shared Time

program, and to "discuss" administrative problems and the like.

Reference: GRPS Ex B, ¶11; GRPS Ex KK; GRPS Ex J, ¶¶10, 13, 23; GRPS Ex Q, ¶¶7, 8, 12; GRPS Ex Y, ¶8; GRPS Ex BB, ¶7.

156. In addition, all of the instructors in the Shared Time program are subject to the PEP evaluation program which is utilized by the public schools in evaluating the performance of teachers of the district, in terms of course content and teaching methodology. The same evaluation program is used with respect to all public school employees. The PEP process essentially involves classroom observation followed by the preparation of a formal written evaluation which ultimately ends up in the teacher's personnel file. Teachers are evaluated each year during their probation (i.e., first two years), and once every three years after having attained tenure. The nonpublic school administrators and teachers have no input or control over that process.

Reference: Chesle, Vol IIA, pp 265, 269-271, 289; Prong, Vol VIIB, p 1248; Rowlands, Vol VIIB, pp 1260, 1261-1263, 1274; Mirandette, Vol VIIIA, p 1304; GRPS Ex B, ¶9; GRPS Ex C, ¶16; GRPS Ex D, ¶15; GRPS Ex F, ¶23; GRPS Ex G, ¶¶10, 16; GRPS Ex I, ¶16; GRPS Ex J, ¶¶22, 24; GRPS Ex K, ¶15; GRPS Ex L, ¶18; GRPS Ex M, ¶14; GRPS Ex Q, ¶18; GRPS Ex S, ¶¶8, 13; GRPS Ex W, ¶¶11, 20; GRPS Ex T, ¶¶8, 11, 13; GRPS Ex AA, ¶12; GRPS Ex XX, ¶17; GRPS Ex BB, ¶¶14, 21; Int Ex A, Tab C, ¶13; Int Ex A, Tab G, ¶13; Int Ex A, Tab M, ¶16.

157. The public schools, as part of the teacher evaluation process, do not specifically monitor Shared Time instruction for religious content.

Reference: Zandee, Vol IB, p 241; Jaksa, Vol IVA, p 714; Rowlands, Vol VIIB, p 1274.

158. In those instances in which parents have requested parent/teacher conferences, Shared Time teachers have made arrangements directly with parents for such purposes. Non-public school administrators are not involved in that process.

Reference: Barth, Vol VIIB, p 1241; Mish, Vol IA, p 112.

159. Shared Time teachers do not teach religion. The topic of religion is not included in the GRPS curriculum.

Reference: Zandee, Vol IB, p 238; Chesle, Vol IIA, p 267; Kroon, Vol VIIB, p 1215; GRPS Ex E, ¶17; GRPS Ex U, ¶¶21, 25; Penny, Vol IVB, pp 795-797.

160. All of the Shared Time personnel have stated that they have never felt any religious pressure or influence being exerted by the nonpublic school administrators and/or teachers to encourage them to incorporate religious matters into the GRPS subject matter they teach or supervise.

Reference: Chesle, Vol IIA, p 267; Wagner, Vol IIIB, pp 558, 559; Kroon, Vol VIIB, p 1207; Prong, Vol VIIB, p 1245; Mirandette, Vol VIIIA, p 1307; GRPS Ex B, ¶¶21, 22, 25; GRPS Ex C, ¶16; GRPS Ex D, ¶16; GRPS Ex E, ¶16; GRPS Ex F, ¶¶23, 24; GRPS Ex G, ¶16; GRPS Ex I, ¶14; GRPS Ex J, ¶¶26, 29; GRPS Ex K, ¶17; GRPS Ex L, ¶21; GRPS Ex N, ¶¶15, 16; GRPS Ex Q, ¶¶19, 20, 23; GRPS Ex R, ¶¶19, 21; GRPS Ex S, ¶16; GRPS Ex T, ¶16; GRPS Ex U, ¶21; GRPS Ex W, ¶22; GRPS Ex Y, ¶19; GRPS Ex Z, ¶15; GRPS Ex AA, ¶20; GRPS Ex BB, ¶22; GRPS Ex CC, ¶18; GRPS Ex DD, ¶¶15, 19.

161. Although some Shared Time teachers acknowledge that there may be something religious about the atmosphere of the Shared Time schools in which they provide their teaching services, the testimony is uncontroverted that any such "atmosphere" has had absolutely no impact or effect upon the content of the courses which are taught, the manner in which

they are taught, or the goals which the Shared Time teachers have for their students, nor does it cause them to introduce religious matter into their classes.

Reference: Chesle, Vol IIA, pp 265, 267; Zandee, Vol IB, pp 238, 241; Penny, Vol IVB, p 799; Kroon, Vol VIIB, pp 1206, 1207, 1210, 1215, 1217; Prong, Vol VIIB, pp 1245-1247; Rowlands, Vol VIIB, pp 1266-1269, 1271; Mirandette, Vol VIIIA, p 1307; GRPS Ex B, ¶25; GRPS Ex C, ¶17; GRPS Ex D, ¶¶11, 16; GRPS Ex F, ¶24; GRPS Ex G, ¶¶16, 17; GRPS Ex J, ¶29; GRPS Ex L, ¶¶23, 24; GRPS Ex M, ¶15; GRPS Ex N, ¶¶15, 16; GRPS Ex Q, ¶¶19, 20, 23; GRPS Ex R, ¶24; GRPS Ex S, ¶16; GRPS Ex T, ¶¶17, 21; GRPS Ex U, ¶¶21, 22, 25; GRPS Ex W, ¶¶22, 24, 25; GRPS Ex Y, ¶22; GRPS Ex Z, ¶¶15, 16; GRPS Ex AA, ¶21; GRPS Ex BB, ¶22; GRPS Ex CC, ¶¶18, 19; GRPS Ex DD, ¶¶13, 15, 18, 21.

162. All Shared Time instructors follow the GRPS work calendar.

Reference: Penny, Vol IVB, p 790; Chesle, Vol IIA, p 272; GRPS Ex D, ¶9; GRPS Ex T, ¶13; GRPS Ex U, ¶12; GRPS Ex W, ¶¶15, 21; GRPS Ex Z, ¶11; GRPS Ex AA, ¶19; GRPS Ex CC, ¶11.

163. All Shared Time teaching assignments are the responsibility of and made by the subject area supervisors employed by the GRPS. Nonpublic school administrators have no input or control over that process.

Reference: Rowlands, Vol VIIB, p 1260; Gritter, Vol IIIA, p 469; Wagner, Vol IIIB, pp 558, 559; Hollern, Vol IIIB, p 617; Boss, Vol IVA, p 651; Jaksa, Vol IVA, p 733; Berends, Vol IVB, p 766; GRPS Ex C, ¶8; GRPS Ex D, ¶15; GRPS Ex E, ¶8; GRPS Ex F, ¶8; GRPS Ex I, ¶9; GRPS Ex L, ¶9; GRPS Ex N, ¶8; GRPS Ex R, ¶10; GRPS

Ex S, ¶6; GRPS Ex W, ¶8; GRPS Ex AA, ¶12; GRPS Ex BB, ¶17; GRPS Ex CC, ¶8; GRPS Ex DD, ¶8; Int Ex A, Tab C, ¶13.

164. GRPS employees are never required to disclose their religious affiliation, nor are they even asked to do so. It is the policy of the district not to make such inquiries of prospective applicants.

Reference: Mirandette, Vol VIIIA, p 1303; Bailey, Vol VIIIA, p 1283; Rowlands, Vol VIIB, p 1260; Prong, Vol VIIB, p 1244; Barth, Vol VIIB, p 1223.

165. Each teacher in the Shared Time program has received periodic orientations in which the guidelines for the operation of the program have been explained in detail. (See also Proposed Finding of Fact #167.)

Reference: Young, Vol VIIIA, p 1322; GRPS Ex B, ¶13; GRPS Ex C, ¶9; GRPS Ex D, ¶18; GRPS Ex E, ¶9; GRPS Ex F, ¶9; GRPS Ex G, ¶9; GRPS Ex I, ¶8; GRPS Ex J, ¶16; GRPS Ex K, ¶10; GRPS Ex L, ¶10; GRPS Ex M, ¶7; GRPS Ex Q, ¶¶10, 11; GRPS Ex S, ¶7; GRPS Ex V, ¶8; GRPS Ex Y, ¶9; GRPS Ex Z, ¶9; GRPS Ex AA, ¶11; GRPS Ex BB, ¶11; GRPS Ex CC, ¶10; GRPS Ex DD, ¶9.

166. In September of 1981, Mr. Young specifically visited the staff meetings of the teachers of the various subject areas to summarize the applicable guidelines. This summary was reduced to writing in a September 3, 1981 memorandum to Dr. Elmer Vrugink, in which Mr. Young stated the following.

"It will be my intent to impart the following information on a continuing basis to the supervisors and instructors of the Shared Time program:

Basis: As Grand Rapids Public School employees, we are providing a unique educational service to the community.

1. We are public school employees.
2. We are supervised by public school employees.
3. The subject of religion would never be discussed in any of our public schools classes.
4. We follow the public school curriculum, the private school curriculum has nothing to do with our classes.
5. We follow the public school calendar, we work when public school personnel work irregardless of the private school calendar.
6. The room that we teach in is a public room—it is a public room in a leased public school building.
 - a. Leased card will always be prominently placed in the classroom.
 - b. Religious artifacts will not be displayed in a public school classroom.
 - c. If we find a problem with our classroom we will notify our supervisor or Shared Time directors; not the private school building principal.
7. Course content:
 - a. We provide supplementary, ancillary courses to private school children.
 - b. We do not provide core courses.
 - c. The courses we provide are either remedial or enrichment in nature."

Reference: Young, Vol VIIIA, p 1322; GRPS Ex GGG; Kroon, Vol VIIB, pp 1204-1205.

167. Shared Time teachers have been specifically admonished not to incorporate religious matters into the content of the curriculum which they provide.

Reference: Zandee, Vol IB, pp 238-239; Chesle, Vol IIA, pp 275-276, 289-290; Penny, Vol IVB, p 795; Rowlands, Vol VIIB, pp 1273-1274.

G. Operation

1. Administration

168. As explained in GRPS Exhibit HH, the Shared Time Director is Mr. John Young, responsible for the administration of the program, budget and planning matters.

Reference: GRPS Ex HH; Vrugink, Vol VB, p 922.

169. In terms of the content of the subject matter taught, Dr. Donna Carter is responsible for curriculum and the various subject area supervisors identified in paragraph 172.

Reference: GRPS Ex HH.

170. In turn, both Mr. Young and Ms. Carter are directly responsible to Dr. Elmer Vrugink, the Deputy Superintendent.

Reference: GRPS Ex HH.

171. In each of the subject areas taught in the Shared Time program, there are subject area supervisors who are responsible for maintaining "quality control" over the type of instruction provided through the GRPS in these areas.

Reference: GRPS Ex HH; Vrugink, Vol VB, p 926; Vrugink, Vol VIIA, pp 1108-1110.

172. The subject area supervisors for the 1981-1982 school year are as follows:

Art	Vee Matusko
Math	William Oosse
Music	Douglas Reahm
Physical Education	Joe Leonardo Arlene Wagner
Reading	Betty Rowlands
Industrial Arts	Barry Boyer
Educational Park	Dr. Tom Next

Reference: GRPS Ex HH.

173. The Director of Shared Time, Mr. John Young, is responsible for the organization and implementation of the administrative aspects of the Shared Time program. At the beginning of each school year, he mails to all the area nonpublic schools a packet of materials outlining the available course offerings through the Shared Time program. Along with such course offerings, the Shared Time office also forwards a summary of the Shared Time Guidelines which outline the rules under which the program is made available to students who otherwise attend nonpublic schools, which guidelines state the following:

- "1. The Shared Time is a Grand Rapids Public School program providing supplemental instruction to meet the educational needs of children.
2. The Shared Time program is a program taught by public school teachers who are hired by, assigned by and, if necessary, fired by the GRPS—nonpublic personnel have absolutely nothing to do with such matters. Shared Time teachers follow GRPS work calendar.
3. Teachers in the Shared Time program are employees of the GRPS, supervised and evaluate by the GRPS

only. Nonpublic personnel have no role whatsoever in the supervision and evaluation process.

4. Due to space considerations, economic considerations, and education-motivated convenience considerations, the Shared Time program is operated and made available in publicly leased classrooms, clearly marked and designated as such. GRPS classrooms are to be provided by the nonpublic schools, stripped of all religious materials or symbols.
5. Teachers in the Shared Time program are required to provide instruction based upon the guides and objectives of the GRPS curriculum. The purpose of the Shared Time program is to provide supplementary, noncore, secular teaching to meet the educational needs of children. The Shared Time curriculum does not and may not parallel the nonpublic school curriculum.
6. All materials, supplies, books, equipment and the like, utilized in providing the Shared Time program must be purchased by or supplied by the GRPS. Such materials/supplies/equipment should be:
 - a. Labeled as GRPS property;
 - b. Stored in locked cabinets or closets when not in use;
 - c. Inventoried regularly;
 - d. Segregated from materials/supplies/equipment of nonpublic;
 - e. Used *only* by public Shared Time teachers.
7. *Students:* All Shared Time students are treated as GRPS students. They are graded, disciplined, etc. as GRPS students."

Reference: GRPS Ex LLL; Young, Vol VIIIA, pp 1320-1321.

174. After the nonpublic schools fill out the GRPS forms, they are then returned to Mr. Young's office for further handling. Once the statistical information is compiled concerning the number of schools, courses and estimated students involved, Mr. Young then meets with the GRPS subject area supervisors to discuss staffing needs for the upcoming school year. The subject area supervisors are then responsible for making appropriate staff assignments. Once the number of teachers has been established by that process, Mr. Young then analyzes the facility needs and makes appropriate arrangements with the nonpublic schools for sufficient leased space to carry on the proposed programs.

Reference: Young, Vol VIIIA, pp 1320-1321.

175. The decision to opt in or opt out of the Shared Time program lies with the nonpublic school administrators. If they choose to opt in, they must do so subject to the GRPS guidelines.

Reference: Vrugink, Vol VB, p 925; Vrugink, Vol VIIA, pp 1161-1162.

2. Hiring Procedures

176. The Assistant Superintendent of Personnel is Mr. David Bailey.

Reference: GRPS Ex A, ¶1.

177. As Assistant Superintendent of Personnel, Mr. Bailey is primarily responsible for the recruiting and hiring of all school district personnel.

Reference: GRPS Ex A, ¶6.

178. In general, the Personnel Department is not involved in the day-to-day operations of the Shared Time program. At the beginning of each school year, the director of Shared Time informs Mr. Bailey regarding the staffing needs of the Shared Time program.

Reference: GRPS Ex A, ¶¶7, 8.

179. With respect to full-time, contracted teachers, including Shared Time teachers, the Board has a uniform and consistent hiring procedure.

Reference: Bailey, Vol VIIIA, pp 1286-1288; GRPS Ex A, ¶9.

180. When available openings occur, the Director of Personnel, Mr. Richard Carlson, follows this procedure:

- a) He first reviews the "lay-off" list to determine whether there are any eligible individuals who could fill that position (the Master Agreement with the teachers Union mandates this procedure);
- b) If the available position is not filled by that process, Mr. Carlson then reviews the GRPS' list of past interviewees;
- c) If the available position is not filled by that process, Mr. Carlson then reviews the applicant files.

181. After comparing credentials, resources, recommendations and the like, Mr. Carlson makes his recommendation to Mr. Bailey who in turn makes a recommendation to the Board for action. If the Board votes favorably on that recommendation, such individual is then hired to fill the available position.

Reference: GRPS Ex A, ¶10.

182. In contrast, when the available position arises in the specialist/consultant area (i.e., physical education, art, music,

reading, math, etc.), the subject area supervisor also becomes involved in the interview and evaluation process.

Reference: GRPS Ex A, ¶10; GRPS Ex B, ¶12; GRPS Ex J, ¶15; GRPS Ex Q, ¶9; GRPS Ex Y, ¶8; GRPS Ex BB, ¶10.

183. It is not unusual for the Personnel Department to contact prior employers or other references as part of its hiring process.

Reference: Bailey, Vol VIIIA, p 1288.

184. The purpose of the GRPS hiring procedure is to provide GRPS students with the best and most qualified instructors. Excellence is the Board's goal.

Reference: GRPS Ex A, ¶12.

185. The Personnel Department is ultimately responsible for the Progressive Evaluation Program (PEP) which is used by the Board to continually review the quality of the education being provided by its teachers.

Reference: GRPS Ex A, ¶14.

186. Because the teachers in the Shared Time program are all classified as specialists and/or consultants, the actual evaluation itself is carried out and performed by the subject area supervisors.

Reference: GRPS Ex A, ¶14.

187. All of the other personnel policies and procedures of the Board are uniform and consistent, applying with equal force to all teachers, including Shared Time teachers.

Reference: GRPS Ex A, ¶17.

3. Supplies and Materials

188. All of the supplies, materials and/or equipment that are utilized in the Shared Time program are provided by or through the GRPS.

Reference: Zandee, Vol IB, pp 224-225; Chesle, Vol IIA, p 265; Barth, Vol VIIB, p 1226; GRPS Ex B, ¶16; GRPS Ex C, ¶12; GRPS Ex D, ¶14; GRPS Ex E, ¶15; GRPS Ex F, ¶10, 12; GRPS Ex G, ¶15; GRPS Ex I, ¶12; GRPS Ex J, ¶19; GRPS Ex K, ¶14; GRPS Ex L, ¶17; GRPS Ex M, ¶13; GRPS Ex Q, ¶17; GRPS Ex S, ¶10; GRPS Ex T, ¶7; GRPS Ex U, ¶17; GRPS Ex W, ¶12; GRPS Ex Y, ¶13; GRPS Ex AA, ¶16; GRPS Ex BB, ¶19; GRPS Ex CC, ¶16; GRPS Ex DD, ¶10.

189. The Board has a uniform ordering procedure which all teachers, including Shared Time teachers, must use in order to acquire supplies and materials needed to provide their educational services.

Reference: Chesle, Vol IIA, p 266.

190. All of the supplies and materials which are provided through the GRPS are stored in such a fashion so that they are isolated from the supplies and materials utilized by non-public classroom teachers in the school buildings in which Shared Time services are offered.

Reference: Mish, Vol IA, p 114; Chesle, Vol IIA, p 267; GRPS Ex N, ¶13; GRPS Ex T, ¶16; GRPS Ex R, ¶12; GRPS Ex S, ¶10; GRPS Ex AA, ¶16; GRPS Ex CC, ¶16; GRPS Ex DD, ¶17, 20.

191. Nonpublic school employees do not use or have access to any of the GRPS supplies and materials used in the operation of the Shared Time program.

Reference: Chesle, Vol IIA, p 275; Dwyer, Vol IVA, p 693.

192. GRPS supplies/materials/equipment are appropriately labeled as public school property and inventoried regularly.

Reference: GRPS Ex R, ¶18; GRPS Ex U, ¶¶17, 20; GRPS Ex Y, ¶13; GRPS Ex AA, ¶16; GRPS Ex CC, ¶16.

4. Grading

193. Grades for those Shared Time classes in which a grade is given are recorded and distributed under a uniform grading procedure which the Board has adopted whereby the grades for all Shared Time instruction are placed on a single public school report card, and mailed out by the Director of Shared Time to the parents of the students participating in the program. The Shared Time teachers do not utilize the report card system of any of the nonpublic schools who have children attending Shared Time classes.

Reference: Dwyer, Vol IVA, p 693; Jaksa, Vol IVA, pp 732-733; Penny, Vol IVB, pp 789-790; Barth, Vol VIIB, pp 1238-1239; Rowlands, Vol VIIB, p 1279; GRPS Ex C, ¶14; GRPS Ex D, ¶12; GRPS Ex E, ¶12; GRPS Ex I, ¶115; GRPS Ex K, ¶12; GRPS Ex R, ¶17; GRPS Ex U, ¶15; GRPS Ex W, ¶18; GRPS Ex DD, ¶14.

5. Lack of Entanglement

194. In the day-to-day operation of the Shared Time program, there is no entanglement of the administrative lines of authority which exist between the GRPS supervisors and their Shared Time teachers and the nonpublic school administrators and their teachers. The lines of authority are clear, distinct and separate. The Shared Time program is administered (i.e., controlled) solely by the GRPS.

Reference: GRPS Ex N, ¶16; GRPS Ex R, ¶21; GRPS Ex U, ¶26; GRPS Ex CC, ¶20; GRPS Ex DD, ¶19; Int Ex A, Tab C, ¶13; Int Ex A, Tab G, ¶13; Int Ex A, Tab M, ¶6.

195. Teacher Lorrie Strand summed up the situation like this:

"I understand there is a concern on the part of the plaintiff to this lawsuit that due to the fact that public school teachers are going into nonpublic schools the administrative lines of authority are going to become entangled or intermixed. I have never experienced any confusion concerning the lines of authority between me and my supervisor, nor between what authority any principal has over me when I am in their building. In my case, I am responsible for what I teach and how I teach it only to my GRPS supervisor."

Reference: GRPS Ex CC, ¶20; see also references to ¶195.

196. There is no danger that religion will or may become intertwined or intermixed in the content of what is taught in the Shared Time program.

Reference: GRPS Ex DD, ¶19; GRPS Ex CC, ¶19; GRPS Ex U, ¶25; GRPS Ex R, ¶21.

6. Little Contact With Nonpublics

197. Outside of the initial contacts with nonpublic school administrators/teachers to arrange the Shared Time program scheduling, GRPS teachers and subject area supervisors have very little day-to-day contact with any nonpublic school personnel.

Reference: GRPS Ex B, ¶22; GRPS Ex E, ¶16; GRPS Ex I, ¶13; GRPS Ex J, ¶¶26, 27; GRPS Ex N, ¶14; GRPS Ex R, ¶¶13, 14; GRPS Ex T, ¶14; GRPS Ex Y, ¶17; Kroon, Vol VIIB, p 1218; Int Ex A, Tab C, ¶13; Int Ex A, Tab G, ¶13; Int Ex A, Tab M, ¶6.

198. GRPS administrators never inspect or supervise the nonpublic school or its instructional program.

Reference: GRPS Ex B, ¶¶22, 23; GRPS Ex Q, ¶¶18, 20, 21; GRPS Ex Y, ¶¶16, 17; Int Ex A, Tab G, ¶13; Int Ex A, Tab M, ¶6

H. Availability To Other GRPS Students

199. All other public school students have the same services available to them which are provided in the Shared Time context.

Reference: Vruggink, Vol VIIA, p 1145; Vruggink, Vol VIA, pp 985-987; Vruggink, Vol VIA, p 1032; GRPS Ex OOO; GRPS Ex PPP; GRPS Ex QQQ; See citations, ¶41.

I. Understanding Of Nonpublic School Administrators

200. The nonpublic school administrators who testified acknowledged receipt of the Shared Time Guidelines (GRPS Exhibit LLL) and the fact that those guidelines simply serve to incorporate in written form the understanding which they have had regarding the operation of the program, since its inception.

Reference: Dwyer, Vol IVA, pp 691-692; Jaksa, Vol IVA, p 731; Johnson, Vol VA, p 846.

201. The nonpublic school administrators understand that opting into the program requires that they comply with the guidelines which attach to the operation of the program.

Reference: Wagner, Vol IIIB, p 558.

202. Nonpublic school administrators understand that:

- a. The teachers involved in the Shared Time program are GRPS employees.

Reference: Mish, Vol IB, p 161; Hollern, Vol IIIB, p 617; Boss, Vol IVA, p 651; Int Ex A, Tab C, ¶13; Int Ex A, Tab G, ¶13; Int Ex A, Tab M, ¶6.

- b. The assignment of Shared Time teachers is the sole responsibility of the GRPS.

Reference: Gritter, Vol IIIA, p 469; Boss, Vol IVA, p 651; Jaksa, Vol IVA, p 713; Jaksa, Vol IVA, p 733.

- c. The Shared Time teachers are subject to the formal supervision and evaluation (i.e., control) of the GRPS and that the nonpublic schools have no authority with respect to the conduct of such teachers, nor any input into the supervision and/or evaluation process which is utilized by the public schools.

Reference: Mish, Vol IB, p 161; Wagner, Vol IIIB, p 559; Hollern, Vol IIIB, p 617; Boss, Vol IVA, p 652; Jaksa, Vol IVA, p 733.

- d. The curriculum which is utilized in providing services in the Shared Time program is that of the GRPS.

Reference: Mish, Vol IB, pp 161-162; Wagner, Vol IIIB, p 559; Hollern, Vol IIIB, p 617.

- e. Rooms leased from the nonpublic schools for Shared Time instruction must be free of all religious symbolism and/or artifacts of any kind.

Reference: Wagner, Vol IIIA, p 522; Hollern, Vol IIIB, p 618; Boss, Vol IVA, p 652; Dwyer, Vol IVA, p 690; Jaksa, Vol IVA, p 732; Int Ex A, Tab C, ¶13; Int Ex A, Tab D, ¶7; Int Ex A, Tab E, ¶5; Int Ex A, Tab G, ¶13; Int Ex A, Tab H, ¶10.

203. The students who participate in the Shared Time pro-

gram, while receiving such instruction, are part-time GRPS students.

Reference: Wagner, Vol IIIA, p 525.

IV. Community Education

A. Purpose

204. Consistent with the educational philosophy of the Board, the purpose and intent behind the Community Education program (before and/or after school) is to make available to all students in the Grand Rapids area, the same educational opportunities.

Reference: Young, Vol VIIIA, p 1360; GRPS Ex KKK.

205. The Community Education program represents a GRPS program of educational opportunity outside of the regular school day.

Reference: Wagner, Vol IIIA, p 504; Boss Vol IVA, p 649; Dwyer, Vol IVA, p 680; Jaksa, Vol IVA, p 712; GRPS Ex KKK.

B. Course Offerings

206. The course offerings made available to part-time GRPS students through the Community Education program (before and/or after school) generally consist of enrichment and/or leisure time courses. On the elementary level, all of the course offerings made available are strictly leisure time in nature.

Reference: Wagner, Vol IIIA, p 504; Dwyer, Vol IVA, p 679; Vruggink, Vol VIIA, p 1112; GRPS Ex JJJ.

207. A complete list of the courses made available in the

before and after school program for the school year 1981-1982 can be obtained by making reference to GRPS Exhibit JJJ.

Reference: GRPS Ex JJJ.

208. On the elementary level, Community Education instruction is generally confined to twelve-week, after school sessions, of shorter duration than the regular semester of any nonpublic school in the district.

Reference: Dwyer, Vol IVA, p 686; Vruggink, Vol VIIA, p 1113; Young, Vol VIIIA, p 1329.

209. On the secondary level, the duration of the Community Education program follows the GRPS school calendar.

Reference: Young, Vol VIIIA, p 1330.

210. All of the types of instructional offerings made available through the Community Education program are otherwise available to full-time public school students, although not necessarily before and/or after school. Because the course offerings of the public schools are much broader than the offerings of the nonpublic schools, there are many opportunities for full-time GRPS students to take the type of courses available in a Community Education program either during the regular school day, or in the evening. Indeed, Mr. Dilley acknowledged on the record that plaintiffs were not making any claim in this case that courses offered by the GRPS on leased premises are not otherwise available to other GRPS public school students.

Reference: Cichewicz, Vol IIA, p 318; Vruggink, Vol VIIA, p 1112; Vruggink, Vol VIA, p 1031; GRPS Ex OOO; GRPS Ex PPP; GRPS Ex QQQ; Dilley, Vol VIIB, pp 1167-1168.

211. None of the nonpublic schools which presently have students attending the Community Education classes otherwise

ever provided such classes to their students. The Community Education classes provided by the GRPS do not serve as a substitute for anything otherwise available at the nonpublic schools which now have students participating in the GRPS Community Education program.

Reference: Mish, Vol IB, p 184; Gritter, Vol IIIA, p 442; Hollern, Vol IIIB, p 620; Young, Vol VIIIA, p 1329; See citations, ¶¶34, 35.

212. In explaining the manner in which the Community Education program is set up, Mr. John Young stated that because Community Education represents a program which is completely voluntary, an important factor in setting up a successful program is to find a teacher who is not only interested in teaching, but also one who is known in the community of potential students so that such a teacher can attract such students to his or her class. As a general rule, Community Education classes will only be offered in the event twelve or more students sign up for the class. In setting up a successful program, the arrangements for appropriate teachers is the most critical and important factor. For that reason, in almost every instance where Community Education classes are held, the teacher employed by the district to teach in the Community Education program is also one that teaches during the regular school day in the same building where the Community Education courses are being offered. Once the teacher has been identified, surveys are then conducted to determine students' interests, and if such course offerings are then approved by the Shared Time office, the program is then implemented.

Reference: Young, Vol VIIIA, p 1325-1328; Jaksa, Vol IVA, pp 728-729; Jaksa, Vol IVA, p 712; Young, Vol VIIIA, p 1328; Dwyer, Vol IVA, p 681; Mish, Vol IA, p 86; Gritter, Vol IIIA, p 447.

213. The same organizational procedure outlined with respect to the Community Education program applies in the public school building setting as well, as evidenced by the testimony of Mr. Young and that of Mr. Cichewicz, the principal for Stocking Elementary.

Reference: Cichewicz, Vol IIA, pp 318-319; Young, Vol VIIIA, pp 1325-1328.

214. None of the course offerings made available through the Community Education program are required by the state of Michigan for graduation purposes, nor are such courses required to be offered by any school.

Reference: Vrugink, Vol VIIIA, p 1153; Gritter, Vol IIIA, p 479; Wagner, Vol IIIB, p 534; Wagner, Vol IIIB, p 585; Young, Vol VIIIA, p 1329.

215. Community Education courses do not fulfill nonpublic graduation requirements.

Reference: Mish, Vol IB, p 184; Wagner, Vol IIIB, pp 533-534.

C. Location

216. See Proposed Findings of Facts under subpart "D" of "III", *supra*, at p 322-323.

D. Students

217. Generally speaking, those students who attend Community Education classes at GRPS leased facilities in the nonpublic schools are those students who also attend such nonpublic schools during the regular school day.

Reference: Mish, Vol IB, p 145; Gritter, Vol IIIA, p 453; Hollern, Vol IIIB, p 589; Visser, Vol VA, p 868.

218. There are, however, exceptions to that general rule. Situations have arisen in which students attend Community Education classes who are not otherwise enrolled in the non-public school where the Community Education class takes place.

Reference: Jaksa, Vol IVA, p 710.

219. The identity of the student body attending Community Education classes on GRPS leased premises does not in any way differ from the identity of the student body attending Community Education classes in other public schools.

Reference: Cichewicz, Vol IIA, p 319.

220. There are students attending 64 area schools who are receiving Community Education instruction in the before and/or after school program.

Reference: Young, Vol VIIIA, p 1331.

221. On the elementary level, students in 34 public schools and in 27 nonpublic schools are receiving Community Education services through the operation of the Community Education program.

Reference: Young, Vol VIIIA, p 1331.

E. Teachers

222. There are over 300 part-time teachers employed by the GRPS in the Community Education program.

Reference: Young, Vol VIIIA, p 1331.

223. Community Education instructors are hired by the GRPS.

Reference: Dwyer, Vol IVA, p 680; Wagner, Vol IIIA, p 504; Bailey, Vol VIIIA, pp 1296-1297; Jaksa, Vol IVA, p 712; Dwyer, Vol IVA, p 681; Hollern, Vol IIIB, p 614.

224. The employment process used in the Community Education program on leased premises is the same process used in the Community Education Department, generally.

Reference: Bailey, Vol VIIIA, pp 1296-1297.

225. In the Community Education context, because most of the teachers are hourly employees, the actual hiring procedure is performed by the regional directors of the Community Education Department or, in the case of that portion of the Community Education program provided on leased premises, by community aides under the direction/supervision of John Young, who simply then report the names of such employees (and other pertinent data) to the Personnel Department. Of necessity, because of the nature of the subjects taught and duration of such teacher's employment, the Personnel Department is not as directly involved in the hiring process as it is with respect to full-time, contracted employees.

Reference: Bailey, Vol VIIIA, pp 1296-1297.

226. Nonpublic school administrators do not have any input into the hiring decisions made by the GRPS with respect to its Community Education teachers.

Reference: Hollern, Vol IIIB, p 614; Gritter, Vol IIIA, p 453.

227. Generally speaking, the teaching staff of the Community Education program on leased premises or other public school sites is otherwise employed during the regular school day as classroom teachers in the same building.

Reference: Mish, Vol IA, p 72; Gritter, Vol IIIA, p 445; Wagner, Vol IIIA, p 504; Dwyer, Vol IVA, p 680; Jaksa, Vol IVA, p 708.

228. As noted earlier, such teachers are generally employed

because the success of the program often depends upon not only the interest, but also the identity of the teacher involved.

Reference: Young, Vol VIIIA, p 1327.

F. Availability To Other Public School Students

229. On the elementary level, the full-time public school students in the city of Grand Rapids have the same opportunities in the Community Education program available to them.

Reference: Cichewicz, Vol IIA, p 318; Vruggink, Vol VIA, p 1031; Vruggink, Vol VIIA, pp 1112, 1113.

230. Community Education programs have been available in the public schools on the elementary level for at least the past ten years, dating back to the early 1970's.

Reference: Vruggink, Vol VIIA, p 1113.

231. On the secondary level, although there is no before school program, full-time public school students nonetheless have the opportunity to take course offerings comparable to the Community Education program, although such offerings may be available at different times, i.e., during the regular school day and/or at night.

Reference: Vruggink, Vol VIIA, pp 1112-1113; Vruggink, Vol VIA, p 1030; GRPS Ex OOO; GRPS Ex PPP; GRPS Ex QQQ; Dilley, Vol VIIB, pp 1167-1168.

G. Operation

232. All teachers in the Community Education program are assigned, supervised and evaluated by the GRPS, in terms of course content and teaching methodology.

Reference: Wagner, Vol IIIB, p 553; Dwyer, Vol IVA, p 682; Jaks, Vol IVA, p 713.

233. Community Education classes are not monitored specifically for religious content.

Reference: Wagner, Vol IIIB, pp 542-543, 551; Jaks, Vol IVA, p 714.

234. Those students who receive grades for attending Community Education classes on leased premises receive those grades from the GRPS, and not from their school of primary attendance.

Reference: Wagner, Vol IIIB, p 532.

235. On the secondary level, the GRPS transfer grades for Community Education classes to the student's school of primary attendance. It is then up to that school to decide whether or not it will accept or reject such transfer of grades for credit.

Reference: Gritter, Vol IIIA, pp 481-482; Wagner, Vol IIIB, pp 533, 534.

V. State Aid

A. Payment for Part-Time GRPS Students

236. Nonpublic school students attending Shared Time and Community Education classes conducted by the GRPS on leased premises are part-time public school students. Such part-time public school students may be counted in membership by the GRPS for the purpose of computing state school aid payments to be made to it. The GRPS receives state school aid payments for part-time public school students that attend its Shared Time classes. These state school aid payments are made irrespective of whether the Shared Time classes are conducted on premises owned or leased by the GRPS.

Reference: See Exhibit SBE-A, §§3, 4 and 5 and Appendix A through D attached thereto; Vruggink, Vol VIIA, pp 1124-1135; Vruggink, Vol VIIB, p 1196.

237. The GRPS admits nonresident students as both full-time and part-time public school students, including students that attend Shared Time and Community Education classes operated by the GRPS on leased premises, as part-time public school students. As to this category of students, the Michigan Legislature has made an additional allowance in the state school aid act to cover the difference between the per capita cost of educating students and the amount of state membership aid generated by such nonpublic, nonresident students in part-time public school membership. In light of this additional legislative allowance that pays the full cost for nonpublic, nonresident, part-time public school students in Shared Time and Community Education classes, the GRPS may not charge tuition for such students. This additional legislative allowance is based on the legislative recognition that public school district boundaries and nonpublic school boundaries are not uniform. Such appropriation facilitates making Shared Time and Community Education instruction available to all students attending nonpublic schools located within a public school district regardless of whether such students live inside or outside the public school district boundaries.

Reference: Exhibit SBE-A, ¶6 and Appendix E attached thereto; Vrugink, Vol VIIA, pp 1153-1157.

B. State Aid Payments Exceed Shared Time and Community Education Costs

238. Some educational programs conducted by the GRPS, such as special education, cost more than the revenue generated by the students in such programs. Other educational programs conducted by the GRPS, such as kindergarten, cost less than the revenue generated by the students in such program. The state aid funds received by the GRPS for students in part-time public school membership in Shared Time classes, including before and after school Community Education classes, offered on leased premises at nonpublic schools, ex-

ceed the cost of providing such classes. The Shared Time and before and after school Community Education classes involving part-time public school students represent approximately 3,000 full-time equated state aid memberships in 1981-1982. The elimination of those 3,000 full-time equated state aid memberships would mean a reduction in state aid payments to the GRPS in fiscal 1981-1982 of approximately six million dollars. Such a reduction in state aid payment to the GRPS in 1981-1982 would have reduced the amount of revenue available to the GRPS to conduct programs other than Shared Time and Community Education.

Reference: Vrugink, Vol VIIA, pp 1093-1094; Vrugink, Vol VB, pp 944-945, 948; Vrugink, Vol VIIA, pp 1133-1135, 1139-1141; Vrugink, Vol VIIB, pp 1181-1187; GRPS Exhibit NNN.

VI. Miscellaneous

A. Enrollment Trends

239. Over the past eleven years, the percentage of the student population in the Grand Rapids area attending nonpublic schools has not changed appreciably. In the 1971-1972 school year 29.8% of the school age population attended nonpublic schools in the city of Grand Rapids, whereas in 1981-1982, 30.3% of the school age children attended nonpublic schools. Concerning comparative enrollment statistics regarding public school memberships and nonpublic school memberships, GRPS Exhibit TTT indicates the following:

School Year	Public School Membership	Nonpublic School Membership
1971-1972	34,468	14,641
1972-1973	33,902	13,942
1973-1974	32,688	13,301
1974-1975	31,785	12,854
1975-1976	31,221	12,530

1976-1977	30,658	11,997
1977-1978	29,486	11,460
1978-1979	27,636	10,825
1979-1980	26,923	10,667
1980-1981	26,318	10,757
1981-1982	26,142	11,362

Reference: GRPS Ex TTT.

240. Compared with other public school districts in the area, the declining enrollment in the GRPS system has not been as large as the decline in other systems, such as Wyoming and East Grand Rapids, which have experienced 27% and 37% declines, respectively.

Reference: GRPS Ex RRR and SSS.

241. Although the Board has experienced a declining enrollment over the past few years, projected enrollments by the late 1980's suggest that the enrollment will begin to increase in light of the projected increase in school age children.

Reference: Vruggink, Vol VIIA, p 1147.

242. The operation of the Shared Time program does not draw children away from the public school system into nonpublic schools.

Reference: Dwyer, Vol IVA, p 682; Berends, Vol IVB, pp 761-766; Jaksa, Vol IVA, p 731.

243. Those nonpublic schools which have experienced increased enrollments do not attribute such increases to the fact that Shared Time services have been made available on leased premises.

Reference: Mish, Vol IA, p 55; Mish, Vol IB, p 197; Dwyer, Vol IVA, p 682.

244. The nonpublic school in the area with the largest reported increase in enrollment and projected enrollment does not participate in the Shared Time program.

Reference: Berends, Vol IVB, pp 761-766.

245. The number of transfers from the public school system to the nonpublic schools and from the nonpublic schools to the public school system, have been approximately the same, something less than 500 students per year.

Reference: Vruggink, Vol VIIA, pp 1123-1124; Vruggink, Vol VIIA, p 1148.

B. Nonpublic School Finances

246. The Shared Time and Community Education Programs were not instituted because of any nonpublic school financial crisis, nor were any nonpublic schools on the verge of closing prior to the initiation of those programs.

Reference: Mish, Vol IB, pp 187-188; Hollern, Vol IIIB, p 620; Dwyer, Vol IVA, p 694; Int Ex A, Tab B, ¶7; Int Ex A, Tab C, ¶16; Int Ex A, Tab M, ¶7.

247. No nonpublic school, with students presently receiving Shared Time or Community Education services, is experiencing or has experienced any financial crises concerning its future existence as an institution of learning.

Reference: Mish, Vol IB, pp 187-188; Hollern, Vol IIIB, p 620; Dwyer, Vol IVA, p 694; Int Ex A, Tab B, ¶7; Int Ex A, Tab M, ¶7.

C. Political Entanglement

248. Mr. Lawrence Pojeski, a Board member for the past 13 years, stated that the operation of the Shared Time and Community Education instructional programs have not been divisive. Mr. Pojeski expressed the opinion that the program has

had quite the opposite effect, that is, an effect which has served to bind the community together.

Reference: Pojeski, Vol VA, p 905.

249. School administrators and teachers with the GRPS have consistently received very favorable feedback from the community in terms of the benefit and value of the Shared Time and Community Education programs.

Reference: Vrugink, Vol VIIA, pp 1144-1145; GRPS Ex C, ¶13; GRPS Ex F, ¶18; GRPS Ex M, ¶12.

250. In 1976, the Board sponsored a survey of the community which revealed that 82% of those responding to the survey are in favor of the Shared Time program.

Reference: Vrugink, Vol VIIA, p 1145; GRPS Ex KKK, p 10.

D. Title I

251. The Title I program (of the Elementary and Secondary Education Act of 1965) is and was designed to deal with the educational needs of economically and educationally disadvantaged children. Under that program, Federal monies are funneled into "target areas" to deal with the educational needs of children located within such areas. The target areas are determined by the concentration of low income families living within public school attendance areas. Under the Title I program, all children living within the target area, who are performing educationally below a prescribed standard, whether attending public or nonpublic schools, are eligible to receive on a comparable basis the educational services made available through the Title I program.

Reference: Vrugink, Vol VIIA, pp 1115-1121.

252. Under that program, monies are allocated to each building and the public school building principal is then vested with substantial discretionary authority to determine the manner in which the available funds will be utilized to meet the educational needs of his/her students. For example, the principal at Alexander opted to use the available monies to hire teacher aides, as opposed to hiring additional reading specialists. Using that approach, the principal at Alexander was and is able to utilize seven support staff members with the monies made available to him.

Reference: Young, Vol VIIIA, pp 1318-1319; Vrugink, Vol VIIA, pp 1136-1137.

253. To the extent that the Title I program funding is not able to meet all of the student needs in target areas, the Shared Time instructional program, particularly in the areas of remedial math and remedial reading, serves to "fill in the gaps" left by Title I. The operation of the Shared Time program permits the GRPS to meet the educational needs of low achievers attending nonpublic schools who reside outside of the target areas, in the same manner in which those needs would be met within target areas. Accordingly, the Shared Time remedial instructional program and the Title I program parallel one another, not only in terms of purpose and effect, but also in that Title I provides for the provision of such services onsite in the nonpublic school setting.

Reference: Vrugink, Vol VIIA, pp 1145-1147; Vrugink, Vol VIIB, p 1198; Vrugink, Vol VIIA, pp 1116-1117; Dwyer, Vol IVA, p 676; Jaks, Vol IVA, p 730.

E. Feasibility Study

254. The Board conducted an extensive feasibility study to examine whether or not it would be administratively feasible to operate all of the Shared Time course offerings in public school buildings. Elements of the study included avail-

ability of space in public school buildings and the time and cost involved in bringing the students to the public school buildings.

Reference: Young, Vol VIIIA, pp 1333-1339; GRPS Ex JJa-JJqq.

255. If such a program were instituted, the cost for transportation would be something in excess of \$830,000.

Reference: Young, Vol VIIIA, p 1343.

256. Based upon the statistics and data compiled in relation to the feasibility study, it was concluded that from an administrative point of view, it would not be feasible to conduct the Shared Time program at public school buildings.

Reference: Young, Vol VIIIA, p 1343; GRPS Ex JJa-JJqq.

F. Conducting Educational Programs Outside School District Boundaries

257. The Grand Rapids Board of Education acquires facilities located outside the district and conducts in such facilities a variety of educational programs, including Special Education, Adult Education, Community Education and Shared Time instruction.

Reference: Vrugink, Vol VIIA, pp 1157-1158; Exhibit SBE-A, ¶2.

258. The Michigan Department of Education approves payments of state school aid to the Grand Rapids Board of Education for part-time public school pupils receiving Shared Time instruction on leased premises located outside the district.

Reference: Exhibit SBE-A, ¶2; see also, references to ¶36.

G. Requirements For Graduation And Course Offerings

259. As a general rule, graduation requirements are imposed by local boards of education of both public and nonpublic schools rather than by the Michigan Legislature. The Michigan Legislature has not required that public or nonpublic school students take a course in physical education, music, art, remedial reading or remedial mathematics as a condition of graduation. Further, the Michigan Legislature has not required that the leisure time enrichment courses offered in Community Education by the Grand Rapids Board of Education must be taken by either public or nonpublic school students as a condition of graduation.

Reference: Vrugink, Vol VIIA, pp 1148-1153; see also, references to ¶36.

260. As a general rule, course offerings are determined by local public and nonpublic school boards of education rather than by the Michigan Legislature. The Michigan Legislature has not required that public school districts or nonpublic schools offer courses in music, art, remedial reading and remedial math. Further, the Michigan Legislature has not required that the leisure time and enrichment courses offered in Community Education by the Grand Rapids Board of Education must be offered by either public school districts or nonpublic schools.

Reference: Vrugink, Vol VIIA, pp 1148-1153; see also, references to ¶36.

VII. Plaintiffs' Standing Under Article III

A. Alleged Taxpayer Status

261. Plaintiffs assert standing herein based only upon their status as taxpayers.

Reference: Plaintiff's Complaint, ¶¶5, 20, 21, 22 and 25.

B. Lack of Injury to Plaintiffs

262. None of the named plaintiffs testified in this cause. Plaintiffs have made no showing whatsoever that their taxes have been increased by the operation of the Shared Time and Community Education programs. Plaintiffs presented no proofs in support of the allegations of paragraph 21 of their Complaint that “[i]t is contrary to the religious conscience of each of the Plaintiffs, and is contrary to the purposes for which the organizational Plaintiff was formed, to be forced by operation of the taxing power to contribute to the propagation of Religion and the support of religious schools.” The evidence is uncontroverted that the allegations in paragraph 22 of Plaintiffs’ Complaint are untrue since state school aid payments more than cover the cost of the Shared Time and Community Education programs. Plaintiffs have presented no evidence that if they prevail herein, their tax bills will decrease. The record is clear that, if plaintiffs prevail, the school district in which plaintiffs reside (see ¶5 of the Complaint) will receive approximately six million dollars (\$6,000,000.00) less in state aid funds and it will, therefore, have less revenue available to conduct educational programs other than the Shared Time-Community Education instruction here at issue. Further, children will be denied valuable secular education services currently provided in the Shared Time and Community Education programs.

Reference: Vrugink, Vol VB, pp 944-945, 948; Vrugink Vol VIIA, pp 1133-1135, 1139-1141; Vrugink Vol VIIB, pp 1181-1187; GRPS Exhibit NNN; Mrs. Bylsma, Vol VIII-B, pp 1388-1393.

VIII. The Religiously-Oriented Nonpublic Schools That Lease Space To The GRPS For Shared Time And Community Education Programs Are Not Pervasively Sectarian

A. Catholic Schools

263. The organization, makeup and operation of Cath-

olic schools in Michigan has drastically changed in the past several decades. Forty or fifty years ago such schools were under the sole direction of the parish pastor and were operated and staffed entirely by nuns. There were no lay teachers in the schools. All of the students in attendance at such schools were of the Catholic faith. Religion was taught using the Baltimore Catechism with questions and answers which had to be memorized. The students were required to go to church services every morning.

Reference: Int Ex A, Tab A, ¶¶8, 9, 10; Tab F, ¶¶13, 14, 18, 20; Tab D, ¶10; Mish, Vol IA, pp 171-174; Wagner, Vol IIIB, pp 563, 566, 568, 569.

264. There are 19 elementary and 2 secondary Catholic schools located within the Grand Rapids School District with 6,233 students in attendance. Catholic schools have existed in Grand Rapids since the community was initially settled, well over 25 years ago. Over half of these schools are located in the inner city in economically deprived areas.

Reference: Int Ex A, Tab B, ¶¶1, 8, 17.

265. The day-to-day operation of each elementary Catholic school is now governed by its own Board of Education which operates under a written constitution. Members of these Boards are elected by ballot cast by parents and others in the parish. Board members are lay persons and need not be of the Catholic faith and, accordingly, need not be members of the Catholic Parish. Persons of religious faiths other than Catholic presently serve on such Boards. Generally, the principal of the school and the pastor of the parish are ex officio, nonvoting members of the Board. The principal is hired by, is responsible and reports to the Board concerning school operations. Parents thereby have a direct voice in and control of the education of their children. The Catholic elementary schools are not church-governed.

Reference: Int Ex A, Tab A, ¶8; Tab B, ¶25; Tab C, ¶2; Tab D, ¶¶12, 13, 15; Tab E, ¶6; Tab F, ¶¶18, 20; Mish, Vol IA, pp 30, 31, 33, 66-68, 93, 165, 166, 177, 189; Cichewicz, Vol IIA, pp 295, 299, 300, 303, 309; Dwyer, Vol IVA, p 673; Jaksa, Vol IVA, pp 703, 704.

266. The Boards of Education for elementary and secondary Catholic schools were organized pursuant to principles adopted at the meeting of the Catholic Bishops at Vatican II in the mid-1960's. This organizational development has resulted in a shift of control over Catholic schools from pastors, religious orders and Bishops, to locally elected Boards of Education.

Reference: Mish, Vol IA, pp 164-166; Ex 31, p 4, 136, 147; Ex 33, ¶140, p 38; Int Ex A, Tab A, ¶9; Tab B, ¶25; Tab F, ¶¶18, 20; Wagner, Vol IIIB, pp 563-566.

267. The purpose of Catholic schools is two-fold: to educate students to take part in society by providing secular instruction comparable to that provided in the public school and to provide the student with an opportunity to receive religious instruction. Catholic schools also have as their purpose to provide educational opportunities for disadvantaged children in poverty areas.

Reference: Ex 24, p 1; Ex 31, p 144; Ex 32, p 639; Mish, Vol IA, pp 69, 162-164, 174, 175, 181; Int Ex A, Tab A, ¶¶6, 11; Tab B, ¶¶3, 6, 7, 12; Tab D, ¶¶14, 15; Tab E, ¶9; Tab F, ¶¶6, 16; Tab K, ¶¶4, 7; Wagner, Vol IIIB, pp 560, 561, 564, 565, 572, 573, 581-583; Hollern, Vol IIIB, pp 602, 618, 619; Jaksa, Vol IVA, pp 727, 728.

268. The two Catholic secondary schools are governed by the Interparochial High School Board of Education. The articles of association for such Board provide that membership on the Board consists of the Bishop of Grand Rapids

or his representative, five elected pastors, two representative nuns and nine lay persons elected by parishes from which students attend the two high schools. Presently serving on the Board are 10 lay persons, one priest and one nun, notwithstanding the provisions of the articles of association. The Catholic secondary schools are not church-governed.

Reference: Wagner, Vol IIIA, pp 494, 564, 565, 577-580; Ex 36; Ex 44; Ex 45.

269. The Catholic schools admit students free of any restriction based upon religious grounds. Indeed, at St. Andrews approximately 50% of the student body is non-Catholic and at St. Stephens, approximately 43% of the student body is non-Catholic.

Reference: Int Ex A, Tab A, ¶9; Tab B, ¶¶18, 19, 20; Tab C, ¶¶7, 8; Tab D, ¶¶8, 11, 14; Tab E, ¶¶8, 9, 10; Tab F, ¶¶15, 16, 17, 21; Tab K, ¶¶5, 6; Tr., Mish, Vol IA, pp 56, 135, 170; Wagner, Vol IIIA, pp 502, 561; Hollern, Vol IIIB, pp 592, 621; Ex 34; Dwyer, Vol IVA, p 673; Jaksa, Vol IVA, p 718.

270. The Catholic schools do not restrict the hiring of teachers on religious grounds. Teachers are hired on the basis of competence and must be certified by the state to teach in their assigned positions. For the most part, lay persons administer such schools and teach the students. Sixty-six percent of the teachers in these Catholic schools have received their college education from public institutions of higher learning. Almost all (i.e., 85%) of the elementary lay teachers in such schools received their practice teaching in public schools.

Reference: Int Ex A, Tab A, ¶¶7, 8; Tab B, ¶¶28, 29; Tab C, ¶¶3, 4; Tab K, ¶¶2, 3; Mish, Vol IA, p 169; Wagner, Vol IIIA, pp 500, 560; Hollern, Vol IIIB, pp 600, 619; Ex 35; Jaksa, Vol IVA, pp 704, 705, 734.

271. Courses in religious instruction are provided separately from secular courses in the Catholic schools. Attendance at religious instruction classes is not required of Catholic school children who are not of the Catholic faith. This is consistent with national guidelines issued by the Catholic Bishops mandating respect for the individual consciences of students.

Reference: Int Ex A, Tab B, ¶21; Tab C, ¶10; Tab D, ¶10; Tab F, ¶15; Mish, Vol IA, pp 116, 173, 191, 192, 193; Wagner, Vol IIIB, pp 561, 562, 569, 581, 582, 583; Hollern, Vol IIIB, pp 603, 604; Ex 31, pp 114, 116.

272. The integrity of Catholic school secular instruction is free of distortion or intrusion of improper or unrelated religious content. No religious restrictions are placed upon teachers respecting the content of such secular instruction. The quality of such instruction is comparable to that which is provided by public schools and meets the requirements of Michigan education laws. Textbooks used in such courses are in use in the public schools and contain no religious references. Graduates of such Catholic schools are accepted for enrollment at other public schools and at public institutions of higher education.

Reference: Int Ex A, Tab A, ¶¶6, 7, 10, 11; Tab C, ¶¶10, 13, 14, 26, 27, 28; Tab C, ¶¶3, 5, 6; Tab E, ¶9; Tab F, ¶¶6, 15; Tab K, ¶¶4, 7; Mish, Vol IA, pp 69, 128, 130, 157, 158, 167, 181; Wagner, Vol IIIB, pp 560, 561, 563, 564, 565, 571; Hollern, Vol IIIB, pp 602, 618, 619; Jaksa, Vol IVA, pp 727, 728; Ex 32, p 369.

273. The subject of religion is presented at Catholic schools in a manner which respects the individual conscience of each student. The tenets of other religious faiths are openly discussed and fairly presented to the student. No effort is made to compel or coerce students into accepting or obeying

any doctrine of the Catholic faith. Textbooks used in religious courses represent other religions fairly. Instruction does not rely upon rote memorization of religious principles, but is based upon a strong appeal to reason. Such schools do not have as a dominant purpose the inculcation of religious values. Religion is taught as much by the manner in which the student is treated as by substantive instruction.

Reference: Ex 31, p 43, ¶76; p 107, ¶181 (sub ¶s 1, 2 and 3); p 114 (lines 24-26); p 121 (lines 16-21); p 158, ¶264; Int Ex A, Tab A, ¶10; Tab B, ¶¶23, 24; Tab C, ¶¶3, 5, 6, 10, 11, 12; Tab D, ¶¶10, 14, 15; Tab E, ¶¶7, 8, 10; Tab F, ¶15; Mish, Vol IA, pp 126, 127, 134-136, 169, 170-174, 190, 191-193, 196-198; Wagner, Vol IIIB, pp 562-564, 566, 568, 569.

274. Religious services for students in Catholic schools are held usually not more often than once a week and in some schools only approximately six times a year. Students of religions other than Catholic need not attend such services if their parents so request. No student is made to participate in any religious worship.

Reference: Int Ex A, Tab B, ¶¶21, 22; Tab C, ¶9; Tab D, ¶9; Mish, Vol IA, p 198.

275. Catholic schools are not an integral part of the religious mission of the Catholic Church.

Reference: Int Ex A, Tab B, ¶15; Int Ex A, Tab C, ¶12.

B. Christian Schools

276. The Grand Rapids Christian School Association operates five elementary and one secondary level schools located within the Grand Rapids Public School District. There are 2,856 students enrolled at the present time. The secondary school, Grand Rapids Christian High School, is accredited by

the North Central Association of Colleges and Schools and by the University of Michigan as satisfying their secular educational requirements of accreditation.

Reference: Int Ex A, Tab G, ¶1; Tab K, ¶4; Gritter, Vol IIB, p 373.

277. Christian schools are owned and operated by the Grand Rapids Christian School Association, made up of parents of students attending Christian schools and other persons who support such schools. All members subscribe to the so-called "basis" in which they acknowledge their common belief that "the priority and responsibility for educating children resides in the parents and not in the state or church." A Board of Trustees of the Association is elected by vote of the membership and is empowered to operate the Christian schools and make basic policy decisions. Each Christian school also has an elected Board of Trustees responsible for the operation of that school under the supervision of the Association Board. Plaintiffs have acknowledged that, as a matter of law, there is a separate identity and corporate interest of the Association apart from the Christian Reformed Church.

Reference: Ex 77; Int Ex A, Tab G, ¶¶5, 6; Tab H, ¶11; Tab I, ¶8; Tab J, ¶9; Gritter, Vol IIB, pp 371-376, 380-382, 406, 417, 428, 429, 433, 434, 477; Boss, Vol IIA, pp 626-628; Ex 82, p 1; Dilley, Vol IIIA, pp 476-477.

278. The basic purpose of Christian schools is to prepare students to be responsible and productive citizens. In addition to the teaching of secular subjects, comparable to those provided in public schools, religion classes are provided. This religious instruction does not consist of the teaching of any church doctrine or the tenets of any particular religious faith, but rather, a study of the Bible and its application to the lives of students. Students at Christian schools are instructed in church doctrine by attending catechism classes taught by

the churches to which they belong. Such instruction takes place outside of school hours and off school premises. Such instruction is the responsibility of the churches and not the Christian schools.

Reference: Int Ex A, Tab G, ¶¶7, 16; Tab J, ¶12; Ex 82, p 1, bottom five lines; p 2, top 4 lines; page 3, lines 4-8.

279. In Christian school religion classes, open discussion and exchange occurs regarding the various religious beliefs represented in the student body. No student is required to adhere to or accept any particular dogma or doctrine of any church. The schools exist to serve students of a wide range of religious beliefs, and not to indoctrinate or inculcate students with doctrines or beliefs of any particular religious faith.

Reference: Ex 82, p 10, lines 6-10; Int Ex A, Tab G, ¶¶7, 10, 16; Tab J, ¶11.

280. Christian schools in Grand Rapids do not impose any religious restrictions on student admissions. Parents who enroll their children in Christian schools need not profess any religious faith but must agree to accept the religious orientation of the Christian schools. In the present school year, for example, families affiliated with over 100 different churches, and some 50 different denominations, send children to schools in the Association.

Reference: Int Ex A, Tab G, ¶¶10, 11; Tab H, ¶¶8, 9; Tab I, ¶7; Tab J, ¶8; Gritter, Vol IIB, pp 399, 400, 405, 407, 412, 423, 424, 434; Boss, Vol IVA, pp 634-637; Ex 72; Ex 68.

281. Students attending Christian schools are not required to attend or participate in religious worship. Students are required to attend weekly meetings where guest speakers discuss the application of religious themes to everyday living. These meetings are termed "chapel" but, do not consist of

any liturgical service or religious worship and are not held in any church.

Reference: Int Ex A, Tab I, ¶12.

282. Christian schools do not require their teachers to be members of any particular faith. Teachers on the staff of the Christian schools are members of various churches and religious faiths. Approximately 70% of these teachers possess Master Degrees. All teachers in these Christian schools are certified to teach by the State and are employed based upon their professional competence in the subjects which they are to teach.

Reference: Int Ex A, Tab G, ¶8; Tab J, ¶10; Gritter, Vol IIIA, p 480; Boss, Vol IVA, p 629.

283. Attendance at Christian schools fulfills the requirements of the Michigan Compulsory Education Law. Such schools teach core subjects comparable to those offered in the public schools of the district as mandated by the state legislature. Students leaving Christian High School meet the secular educational requirements for admission to public institutions of higher education. In the teaching of secular subjects relevant moral and religious questions are addressed but not so as to distort or intrude in the secular subject matter.

Reference: Intervenor Ex A, Tab G, ¶¶7, 9; Gritter, Vol IIIA, p 480.

284. Christian Schools are not an integral part, or any part of the religion mission of any church. The schools represent an extension of the home, not the church.

Reference: Gritter, Vol IIB, p 406; Int Ex A, Tab G, ¶6; Plaintiffs' Ex 77.

C. Lutheran Schools

285. Immanuel-St. James Lutheran School, the only Lutheran school presently participating in the Shared Time program, is operated by a Joint Board of Education whose members are lay people elected by the Voters' Assembly of lay members of the two Lutheran congregations, Immanuel Lutheran and St. James Lutheran. The pastors of the two congregations are invited to attend Board meetings but have no vote. The day-to-day operations of the school are the responsibility of the school principal, subject to the policies of the Joint Board. The Lutheran school is not church-governed.

Reference: Int Ex A, Tab M, ¶11; Tab N, ¶6; Int Ex C, ¶9; Plaintiffs' Ex 90, Answer 79.

286. Immanuel-St. James Lutheran School is housed in two separate buildings and has a total enrollment of 96 students. Approximately one-sixth to one-eighth of the students are of religious faiths other than Lutheran. While preference in attendance at the school is given to Lutherans, attendance is open to any who desire a Christian education for their children. Children of other religious faiths are openly accepted. Since ample space exists, this preference of Lutherans does not work to exclude those of other faiths.

Reference: Int Ex A, Tab M, ¶¶2, 13; Tab N, ¶9; Johnson, Vol VA, pp 820-823, 850.

287. The primary purpose of Immanuel-St. James School is to educate its students in the secular subjects required by state law. Its secondary purpose is to provide a Christian community for its students in which they may learn.

Reference: Int Ex A, Tab M, ¶¶14, 20; Tab N, ¶¶8, 9; Int Ex C, ¶10.

288. Teachers in the Lutheran school are certified to teach in their subject matter areas by the state and meet the sec-

ular requirements for such teacher certification. Immanuel-St. James School provides core subject courses that are comparable to those provided by the public school districts. All textbooks, except for those employed in religious courses, could be found in any public school in Michigan. While teachers address religious and moral questions which may be relevant to a given course, this is not done in such a manner as to distort or intrude in the secular instruction.

Reference: Int Ex A, Tab M, ¶¶22; Tab N, ¶¶8, 9; Johnson, Vol VA, pp 830, 831, 833, 846, 847; Int Ex C, ¶11.

289. No child attending Immanuel-St. James School is compelled to accept or believe the Lutheran faith. No secular subject is taught in such a way as to indoctrinate the student in any particular religious belief. There is no attempt to proselytize. Students of other faiths are encouraged to participate fully in the programs offered by their own congregations.

Reference: Int Ex A, Tab M, ¶¶16, 22; Tab N, ¶9; Int Ex C, ¶12.

290. The Lutheran school is not an integral part of the religious mission of any church.

Reference: Int Ex A, Tab N, ¶9; Int Ex C, ¶11.

D. Catholic, Christian and Lutheran Schools are Religiously-Oriented, Not Pervasively Sectarian

291. Catholic, Christian and Lutheran Schools maintain that religion or the Word of God is present throughout their schools. This statement means that the faculty and students strive to maintain an atmosphere and attitude of respect and love for one another in whatever activity or class they may be pursuing, in the form of a Christian community.

Reference: Int Ex A, Tab A, ¶10; Tab B, ¶27; Tab C, ¶¶3, 5, 12; Tab G, ¶¶7, 15, 16; Tab M, ¶¶14, 22; Tab N, ¶¶8, 9; Ex 44, §1.3(e); Ex 82, p 2, line 27; p 3, line 1-3; p 4, line 5-9; p 9, last 6 lines; p 10 Schipper statement; Int Ex C, ¶11; Johnson, Vol VA, p 831.

292. These schools are religiously-oriented, but they are not pervasively sectarian institutions.

Reference: Please see the references following ¶¶263 through 290.

IX. The Baptist Schools Are Pervasively Sectarian

293. The Grand Rapids Baptist Academy operates four elementary schools and one secondary level school in the Grand Rapids area, three of which are located within the Grand Rapids School District. Total enrollment in the five schools in the present school year is 1,141 students. Other than Outdoor Education, students attending the Baptist schools do not participate in any Shared Time or Community Education programs conducted by the Grand Rapids School District.

Reference: Berends, Vol IVB, pp 759-761, 763, 764, 765.

294. The Baptist schools are projecting an enrollment for the 1982-1983 school year of somewhere between 1300 and 1350 students. These schools have experienced a rapid growth since their organization in 1972, when they started with 90 students.

Reference: Berends, Vol IVB, pp 758, 761.

295. The Grand Rapids Baptist Academy, the fastest growing nonpublic school in the area, has elected not to participate in the Shared Time program because it cannot live with the requisite loss of control which attaches to such participa-

tion. The Grand Rapids Baptist Academy has not and will not participate in the program because it would lose control over the identity and religious background of those teachers who would or may be selected by the GRPS to teach in the program. Further, the Academy believes that it is not in their best interests as a Baptist school to have GRPS teachers in their buildings who do not meet the strict standard of faith which applies to all teachers employed by the Academy, which requires that such staff members have a spiritual commitment to Jesus Christ as their Savior.

Reference: Berends, Vol IVB, pp 766, 767.

296. The primary purpose of the Grand Rapids Baptist Academy is to help its students to know God and to be able to formulate their own set of religious values and convictions based on the Word of God. The Baptist schools conduct their operations and provide their curriculum to carry out that primary purpose. Whatever the course or subject matter, that purpose is of paramount importance. All subjects are taught with a religious view. The Baptist world and life view is interwoven in the secular subject matter as a means of transmitting the specifics of the Baptist creed. Spiritual and religious truths must be incorporated in every subject. Many of the Baptist school textbooks used in secular subjects are bibliocentric or Christ-centered.

Reference: Berends, Vol IVB, pp 768-771, 775, 777; Ex 9, p 5; Ex 9, p 2, ¶1; p 4, ¶4.

297. The Baptist schools, as a condition of employment, require that their teachers sign a written statement expressing their personal "full and sincere" commitment to the tenets of faith as set forth in the Doctrinal Statement of the General Association of Regular Baptist Churches. That statement provides in part, as follows:

"I totally accept the doctrinal statement of the Baptist Academy and express my full and sincere commitment to the Doctrinal Statement of the General Association of Regular Baptist Churches, including affirmation that:

1. The Bible, verbally and plenary inspired, is God's infallible word, authoritative for all faith and life.
2. There is one God, personal, infinite, perfect, and eternally existing as Father, Son and Holy Spirit.
3. Jesus Christ is true God and true man, was born of the Virgin Mary, lived a sinless life, provided substitutionary atonement for lost man, and arose bodily from the grave.
4. The Holy Spirit is a divine person and works in conviction of men and in the regeneration, sanctification, and preservation of the believer.
5. God directly created the universe from no pre-existing substance. We reject both naturalistic and theistic evolution.
6. Satan is a fallen, created personality, opposed to all that is holy and destined for eternal punishment.
7. Man was made in God's own image and fell into sin in Adam and is now a sinner both by nature and choice, and can be restored to God's favor only by God's provision in Christ as applied by the Holy Spirit.
8. God's provision in Christ is the only grounds for man's justification which includes both pardon from sin and the gift of eternal life.
9. Salvation comes to man only by grace through faith in Jesus Christ, apart from any human merit.

10. All those who have experienced salvation are members of the 'church which is his body', and thus are eligible for baptism and membership in the local church.
11. Baptism by immersion and the Lord's supper are ordinances of the church.
12. Jesus Christ is the Head of the church and every local church has the right under Christ to govern itself.
13. Every believer is eternally secure, being 'kept by the power of God'.
14. All persons will experience resurrection, believers to a state of eternal felicity and unbelievers to eternal punishment.
15. The return of Christ includes both the rapture of the church and his return in glory. The first is for his church which is personal, pre-tribulational, pre-millennial, and may occur at any moment. The second is his return to earth to establish his righteous reign over the earth. This coming is visible, personal, pre-millennial, and in power and great glory.
16. Civil government is by divine appointment and separation between it and the church should be maintained."

The Baptist Academy requires that no less than 90% of its teachers be members of the Baptist church. Of the remaining number, such teachers must belong to Bible believing churches, such as Bethany Bible or Calvary Church.

Reference: Int Ex B; Berends, Vol IVB, pp 768, 771, 772; Ex 9, p 5.

298. Admission of students is restricted to children of families in which at least one of the parents, preferably both, are born-again Christians, having committed their lives to Jesus Christ as their personal Savior. Also it is expected that the values and teachings of the Word of God will be prevalent in their home and family life. Parents are expected to be faithful in church attendance and to have a positive Christian testimony in the community.

Reference: Berends, Vol IVB, p 770; Ex 9, p 14.

299. The Baptist Academy is an integral part of the religious mission of the Baptist Church.

Reference: Berends, Vol IVB, p 775; Plaintiffs' Ex 9; Int Ex B.

300. The Baptist schools are pervasively sectarian institutions.

Reference: Berends, Vol IVB, pp 758-778; Plaintiffs' Ex 9; Int Ex B.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, a District of Columbia corporation; PHYLLIS BALL, KATHERINE PIEPER, GILBERT DAVIS, PATRICIA DAVIS, FREDERICK L. SCHWASS, and WALTER BERGMAN,
Plaintiffs,

vs.

THE SCHOOL DISTRICT OF THE CITY OF GRAND RAPIDS, a Municipal corporation; PHILLIP RUNKEL, Superintendent of Public Instruction of the State of Michigan; STATE BOARD OF EDUCATION OF THE STATE OF MICHIGAN; LOREN E. MONROE, State Treasurer of the State of Michigan,

Defendants,

and

IRMA GARCIA-AGUILAR and SIMON AGUILAR, husband and wife, Individually and as Parents of Christina, Miguel and Carlos, Minors; BRUCE BYLSMA and LINDA BYLSMA, husband and wife, Individually and as Parents of Jeff and Eric, Minors; ROBERT COMER and PENNELOPE COMER, husband and wife, Individually and as Parents of Marie Lin, Robert and Michael, Minors; CLARENCE R. COVERT and ROSALEE COVERT, husband and wife, Individually and as Parents of Christina and Deborah, Minors; SCIPUO FLOWERS and JANICE FLOWERS, husband and wife, Individually and as Parents of David and DeWitt, Minors; JOHN LEETSMA and SHIRLEY LEETSMA, husband and wife, Individually and as Parents of Amy, a Minor,

Intervenors.

File No.
G80-517-CA1

PLAINTIFFS' PROPOSED FINDINGS OF FACTS
AND CONCLUSIONS OF LAW

This nonjury trial commenced on May 10, 1982 and consumed eight trial days. The Plaintiffs, Americans United For Separation Of Church and State, allege that the Defendants, School District Of The City of Grand Rapids and The State of Michigan, have violated the Establishment Clause of the First Amendment to the United States Constitution by providing teachers and equipment to forty-one private religious schools in the Grand Rapids area. Having reviewed the testimony of the witnesses, numerous exhibits, and the parties' briefs, I make the following Findings of Fact and Conclusions of Law. *Fed. R. Civ. P. 52(a)*. The following outline summarizes the Court's Findings of Fact:

	Page
INTRODUCTION	381
I. SECTARIANISM AT THE PRIVATE RELIGIOUS SCHOOLS	383
A. The Catholic Schools	383
B. The Christian Schools	404
C. The Lutheran Schools	419
II. EXCESSIVE GOVERNMENT ENTANGLEMENT WITH RELIGION	425
A. The Lease	426
B. Desanctification of the Shared Time Classes	428
C. Student Body Identity	431
D. Teacher and Staff Identity	433
E. Coordination of Classes and Schedules	440
F. Political Entanglement	444
G. Miscellaneous Contacts	445
III. PRIMARY EFFECT OF ADVANCING RELIGION	446
IV. PRIVATE NATURE OF SHARED TIME CLASSES	455
A. Religious and Racial Composition	455
B. Attendance by Nonresident Private School Students in Shared Time Classes	456
APPENDIX—Biographical Index of Courtroom Witnesses	458

FINDINGS OF FACT

INTRODUCTION

1. This case was commenced August 7, 1980 by the filing of Plaintiffs' Complaint alleging that Defendant Grand Rapids School District or Grand Rapids Board of Education had leased from various nonpublic schools classrooms or portions of buildings, then staffed these facilities with teachers employed and paid by the Public School District to teach classes in subjects such as physical education, art, reading, music, and mathematics. The students involved in these "Shared Time" classes were otherwise enrolled full time in the nonpublic schools from whom the physical facilities were leased.

2. By means of Interrogatories and Exhibits admitted into evidence and testimony at trial, a multitude of facts pertaining to the program has been brought to the attention of the Court. Defendant School District utilizes a standardized form of lease (*Exhibit HHH*) to provide access to the physical properties of the various nonpublic schools, except that the lease between Defendant School District and the six schools of the Grand Rapids Christian School Association (*Exhibit 74*) covers all six schools in one document. No specific rooms or portions of buildings are described in any lease. The conceptual nature of this lease is that various rooms and areas in the nonpublic school will come within the operational effect of the lease as and when the public school teacher occupies such areas; otherwise and at other times, those rooms and areas are not under lease.

3. Public school teachers occupy the leased facilities in order to conduct classes of three different kinds:

1. "Shared Time" classes during the "regular school hours". Most of these classes are in physical education, art, music, reading, and math.

2. "After-School" Community Education classes. These are mostly arts and crafts, cooking, painting, and physical activities such as gymnastics, but see the complete list attached to *Exhibit III*. Teachers for these "public school" classes are selected from the faculty of the nonpublic school and are paid \$9.50-\$10.00 per hour by Defendant School District to teach the classes in the same building where they are employed full time by the nonpublic school.
3. Morning or "Zero Hour" Community Education classes conducted at the three nonpublic high schools, which are West Catholic, Catholic Central, and Christian High School. For a list of classes, see *Exhibits 57-58* (Christian High School), *Exhibits 92 and 93* (Catholic Secondary Schools), and the list attached to *Exhibit III*. Nearly all of the teachers for this "public school" program are recruited from the full-time faculty of the particular nonpublic high school where the classes are held.
4. From a small beginning in the years 1970-1975, these three programs have increased to the point where they involved 12,479 nonpublic school students in 1973-79. *Exhibit 28 & Exhibit 90* at Interrogatory #64. By a complicated process of "equating" these part-time students to "full time equivalent" students, Defendant School District is able to qualify for state aid, or state tax funds. For 1978-79 there were 1,872.7 full time equivalent (FTE) students for which Defendant School District received \$746.29 each in state aid, or \$1,397,577.20. *Exhibit 90* at Interrogatories 15-20. In the year 1981-82, there were about 3,000 full time equivalent (FTE) students and the amount of state aid was about \$2,000 per student, or a total of about \$6,000,000 contributed to these programs in state tax funds.

5. An issue has also developed in this case as to the sectarian character of the schools in which these "public school" programs are being offered. In order to invoke the prohibition of the Establishment Clause of the First Amendment, Plaintiffs must show that these aid programs involve diversion of significant amounts of tax funds to institutions in which religion is so pervasive that a substantial portion of their functions are subsumed in the religious mission of the institutions. See *Hunt v McNair*, 413 U.S. 734, 743 (1973). Consequently, many of the exhibits offered by Plaintiffs and much of the testimony of Plaintiffs' witnesses concerned this issue of the extent of religious activity in the approximately 41 nonpublic schools involved in this case.

I. SECTARIANISM AT THE PRIVATE RELIGIOUS SCHOOLS

A. The Catholic Schools

6. Many of the Catholic school administrators testified that certain books are used as guidelines specifically for Catholic schools. *Testimony of Edward Wagner* (West Catholic High School), *Dale Hollern* (Catholic Central High School), *Sister Janet Mish* (Immaculate Heart of Mary School), *Timothy Dwyer* (Sacred Heart School), and *John Jaksa* (St. Stephens School). Sister Mish, for example, stated that a pamphlet entitled "To Teach As Jesus Did" is a resource material used by her school. She agreed with paragraphs 102, 103, and 104 of that pamphlet, which state:

102 Christian education is intended to "make men's faith become living, conscious, and active, through the light of instruction" The Catholic School is the unique setting within which this ideal can be realized in the lives of Catholic children and young people.

103 Only in such a school can they experience learning and living fully integrated in the light of faith. The Catholic School "strives to relate all human culture eventually to the news of salvation, so that the life of faith will illumine the knowledge which students gradually gain of the world, of life, and of mankind" Here, therefore, students are instructed in human knowledge and skills, valued indeed for their own worth but seen simultaneously as deriving their most profound significance from God's plan for His creation. Here, too, instruction in religious truth and values is an integral part of the school program. It is not one more subject alongside the rest, but instead it is perceived and functions as the underlying reality in which the student's experiences of learning and living achieve their coherence and their deepest meaning.

104 This integration of religious truth and values with the rest of life is brought about in the Catholic school not only by its unique curriculum but, more important, by the presence of teachers who express an integrated approach to learning and living in their private and professional lives. It is further reinforced by free interaction among the students themselves within their own community of youth. *Exhibit 33 at 28-29.*

7. Paragraph 118 of the same document elucidates the threefold purpose of Catholic Schools:

118 We are well aware of the problems which now face the Catholic school system in the United States. We also wish our position to be clear. For our part, as bishops, we reaffirm our conviction that Catholic schools which realize the threefold purpose of Christian education—to teach doctrine, to build community, and to serve—are the most effective means available to the Church for the education of children and young people who thus may

"grow into manhood according to the mature measure of Christ" . . . We call upon all members of the Catholic community to do everything in their power to maintain and strengthen Catholic schools which embrace the threefold purpose of Christian education. *Exhibit 33 at 33.*

8. Another "resource material" that Immaculate Heart of Mary uses as a "guide" is the National Catechetical Directory for Catholics of the United States. *Exhibit 31.* On page 143 of that document, it states that "Catholic schools are unique expressions of the Church's effort to achieve the purposes of Catholic education among the young. They 'are the most effective means available to the Church for the education of children and young people.'" The Directory provides that the Catholic school should have a "set religion curriculum. . . ." *Id.* The school's principal and faculty are responsible for making clear the importance of religion. *Id.*

9. The special mission of Catholic schools is expressed in the following paragraph at pp. 143-144 of the National Catechetical Directory:

Its nature as a Christian educational community, the scope of its teaching, and the effort to integrate all learning with faith distinguish the Catholic school from other forms of the Church's educational ministry to youth and give it special impact. In Catholic schools children and young people "can experience learning and living fully integrated in the light of faith", because such schools strive "to relate all human culture eventually to the news of salvation, so that the life of faith will illumine the knowledge which students gradually gain of the world, of life and of mankind." Cooperative teaching which cuts across the lines of particular disciplines, inter-disciplinary curricula, team teaching, and the like help to foster these goals of Catholic education. *Exhibit 31 at 143-44.*

10. A document of "Vatican II" that is used as a resource guide by Immaculate Heart of Mary, Sacred Heart, and other Catholic schools is the "Declaration on Christian Education". The "Declaration" asserts that:

Since every Christian has become a new creature by rebirth from water and the Holy Spirit, so that he may be called what he truly is, a child of God, he is entitled to a Christian education. Such an education does not merely strive to foster in the human person the maturity already described. Rather, its principal aims are these: that as the baptized person is gradually introduced into a knowledge of the mystery of salvation, he may daily grow more conscious of the gift of faith which he has received; that he may learn to adore God the Father in spirit and in truth (cf. Jn. 4:23), especially through liturgical worship; that he may be trained to conduct his personal life in righteousness and in the sanctity of truth, according to his new standard of manhood (Eph. 4:22-24). *Exhibit 32 at 640.*

The "Declaration" emphasizes that the Catholic school is distinguished from other schools in the following way:

The Church's involvement in the field of education is demonstrated especially by the Catholic school. No less than other schools does the Catholic school pursue cultural goals and the natural development of youth. But it has several distinctive purposes. It aims to create for the school community an atmosphere enlivened by the gospel spirit of freedom and charity. It aims to help the adolescent in such a way that the development of his own personality will be matched by the growth of that new creation which he became by baptism. It strives to relate all human culture eventually to the news of salvation, so that the light of faith will illumine the knowledge which stu-

dents gradually gain of the world, of life, and of mankind. *Exhibit 32 at 645-46.*

11. The Principal of Immaculate Heart of Mary, Sister Janet Mish, a member of the Dominican Sisters, has been the Principal there for the past three years. When she applied for the position she was interviewed twice, first by the Board of Education. The Board consists of seven elected members, all of whom are Catholic, and four ex-officio members who are all Catholic and two of whom are clergy. After she was hired, her religious superiors sanctioned her travel from Saginaw to Grand Rapids. *Testimony of Sister Mish.*

12. The Immaculate Heart of Mary Church, parish center, school building, and house of residence of the Oblate Fathers are adjacent to one another at the intersection of Plymouth and Burton streets in Grand Rapids. *Id.*

13. In the school building there are religious symbols displayed such as the crucifix and the Blessed Virgin. These artifacts are not displayed in any of the shared time classrooms. Sister Mish testified that student artwork was currently displayed that was religious in nature in the lobby of the school. *Id.*

14. The majority of school children in the Immaculate Heart of Mary School come from parents who are members of the parish. Not all of the schoolchildren live in the vicinity of the parish church and school. Some come from Kentwood, Cascade, and other areas several miles from Immaculate Heart of Mary. Out of 424 children enrolled at Immaculate Heart of Mary for the school year 1981-82, only 14 are non-Catholic. The remainder of the students are Roman Catholic. *Id.*

15. There are seventeen (17) teachers on the teaching staff at Immaculate Heart of Mary, all of whom are Catholic. The

three administrators (Principal Mish, Thelma, Godell) are Catholic. *Id.*

16. The shared time classes are given exclusively to students drawn from the Immaculate Heart of Mary student body. *Id.*

17. In the "Guidelines for Parents" published by Immaculate Heart of Mary School, the following "Statement of Philosophy" says:

The educational program at Immaculate Heart of Mary School stems from the reality that children are citizens of two kingdoms, that of God and that of the world.

The staff at IHM is in partnership with school families, assisting them in the development of their sons' and daughters' God-given gifts and abilities. The children are educated for life on this earth while being helped to realize that their highest allegiance is to God, their loving Creator.

IHM provides a full grade school curriculum in an environment which offers children opportunities to live in society as mature, responsible, Christian citizens, deeply committed to God and His Kingdom. *Exhibit 6* at "i."

18. The publication states that boys from the fifth grade to the eighth grade are "encouraged" to become altar boys. When "Holy Days of Obligation" occur on a school day, all of the Immaculate Heart of Mary students attend Mass. *Exhibit 6* at 8.

19. Immaculate Heart of Mary children's masses are held every Wednesday morning at 10:00 a.m. Masses are also held on the first Friday of the month at 10:00 a.m. *Id.* at 10.

20. "Religious Studies" are specifically included in the curriculum in kindergarten and in all grades. *Id.* at 27-46.

21. The Intervenor-Defendants sought to elicit testimony from Sister Mish that Catholic schools have become more liberal in their approach to education. Sister Mish testified that today Catholic schools are less inclined to "inculcate" their students by means of rote memorization. Such changes may indeed distinguish the pedagogy of contemporary Catholic schools from that of their predecessors; even so, various passages from Parent Handbooks and other literature made available to the public by Catholic schools involved in this case establish the dominant sectarian mission of these schools. *Exhibits 1-6, 11, 21-24.* And see *Exhibit 20* at 80; *Exhibit 31* at 143, 144; *Exhibits 32, 33.*

22. Religious studies are held at Immaculate Heart of Mary in Kindergarten and in Grades 1 through 8. *Exhibit 5* at 2; *Exhibit 6* at 27-46. Not only do the students learn religious instruction, they acquire habits of religious observance. *Exhibit 5* contains additional statements, apparently directed toward parents, that reveal the extensive integration of religion into the school program.

23. Brochures from other Catholic elementary schools participating in the Shared Time and Community Education programs describe the extent of religious domination of each school and its total curriculum. In addition to literature from Immaculate Heart of Mary School, the Court has received exhibits regarding the following: St. Adalbert School (*Exhibit 1*); Saint Jude School (*Exhibit 2*); Marywood Academy (*Exhibit 3*); St. Stephen's School (*Exhibit 11*); Sacred Heart School (*Exhibit 4*); and St. Andrew's School (*Exhibit 25*).

24. Under the heading of "Guidelines for Parents", the handout for St. Adalbert begins with "A Prayer For Parents," then states the "Goals" of the school:

1. To impart knowledge in the teachings of Christ.
2. To foster the spiritual, academic, physical, cultural, emotional and social development of each student in a Christian atmosphere.
3. To help students to recognize themselves as a worthwhile person, acknowledging their own limitations, but also developing their potential.
4. To help students to respect other races, cultures and creeds.
5. To instill an awareness of others' needs and willingness to give of self and not just of material things.
6. To teach students to accept responsibility for their own actions.
7. To help each student realize that to love and serve God and others should be a joyful and fruitful experience and not a burden.
8. To provide an education which is academically second to none.
9. To operate the school so efficiently that all monies spent earn full value.
10. To provide all parents the opportunity to have their children educated at St. Adalbert School.
11. To constantly improve communications with parish families.
12. To compensate the teaching staff as well as possible within the economic capability of the parish.
13. *To maintain a teaching staff that is completely dedicated to a Catholic education.*
14. To develop the best CCD and Adult Education Programs possible.

Exhibit 1 at pp. 2B-2C (emphasis added). Under the caption "Tuition and Fees", it states that "Parishioners are encouraged to donate at least \$15.00 a Sunday" (presumably to the parish Church). Non-parish students must pay \$800.00 per child. *Id.* at 18.

25. The Parent, Teacher, and Student Handbook for Saint Jude expresses a "Philosophy of Education" that reads as follows:

"To Teach as Jesus Did" is the basis of the Saint Jude School philosophy. Our purpose is to create a Christian atmosphere of love of God, self, and others. The school curriculum incorporates the message of Christ building a community of brotherhood which hopefully will lead to a life of service to others. To accomplish our purpose Saint Jude School strives to provide:

A God oriented environment which permeates the total educational program.

A friendly and supportive environment in which a positive self-concept can be developed and where sensitivity and respect for others can flourish.

Opportunities to pray, worship and celebrate as members of a Christian community.

A Christian atmosphere which guides and encourages participation in the Church's commitment to social justice.

A continuous development of knowledge of the Catholic Faith, its traditions, teachings and theology.

An environment which guides children to discover their uniqueness, aiding personal development, and teaching the children to share their individuality with others.

The entire Saint Jude community—families, faculty, administrators, and priests—seeks to continue, extend and compliment the work of the parents who are the primary educators of their children. *Exhibit 2* at p. 2 (emphasis added).

“Liturgical Celebrations” are described later in the hand-out:

Class liturgical celebrations are planned by the students and teachers. Parents are invited and encouraged to attend these Masses with the students. All-school liturgies take place monthly and are planned by the faculty and students. Parents are encouraged to attend. *Id.* at 8.

26. Marywood Academy “bases its education endeavors on the belief that each person is a unique individual with special abilities and needs which can best be recognized and developed within a caring Christ-centered community.” *Exhibit 3*. The Academy is “staffed with dedicated, certified teachers who are committed to Christian education. . . . Catholic beliefs are fully integrated into the total curriculum. Every student participates in daily religion class and weekly Mass or Prayer Service.” *Id.*

27. In the Parent’s Handbook distributed by Sacred Heart School, the “Philosophy of Education” stated on the first un-numbered page provides:

It is the aim of Catholic education to cooperate with our Holy Mother Church and with the parents, so as to assist, guide, inspire, instruct, and form their children so as to

help them to perfect themselves with the help of God’s grace, to the attaining of the supreme goals of human life in time and in eternity.

To this end the Catholic School shall strive:

1. To perfect the intellect of their students with all good intellectual habits, *natural and supernatural*; and
2. To perfect the will of the students with all good moral habits, *natural and supernatural*.

Exhibit 4 (emphasis added). Sacred Heart School carries out this philosophy of education by developing students:

1. Who have a thorough grounding in Catholic belief and worship in the light of the teaching of Vatican Council II,
2. Who have a thorough grounding in general education comparable to the best in our community with a view of the requirements of modern society and economic life,
3. Who are courteous and self-disciplined,
4. Who are physically fit with good health and grace,
5. Who have an appreciation of the artistic achievements of others and have had an opportunity to show their own creative ability. *Id.* at 1-2 (emphasis added).

28. Timothy Dwyer, the Principal at Sacred Heart School, testified that the entire staff there is Catholic, except for the custodian. Out of an enrollment of 197 students, 187 are Catholic. Among the religious artifacts in the school building proper are a statue, a crucifix, and a picture of the Roman Catholic Pope. *Testimony of Timothy Dwyer*.

29. St. Stephen’s School is located in East Grand Rapids on grounds containing the St. Stephen’s Church, rectory, and con-

vent buildings. The school itself is physically connected to the church by means of a walkway. *Testimony of John Jaksa.*

30. The Principal of St. Stephen's School, John Jaksa, testified that all of the members of the St. Stephen's Board of Education are Catholic, with the exception of Shirley Rapier. Nine out of the ten teachers are Catholic. The tenth is Lutheran. The religious character of the school's student body is 57% Catholic.

31. Despite a substantial non-Catholic minority, the brochure made available to the public announces the Catholic mission of the school in unambiguous terms. *Exhibit 11.* The "School Program" described in the brochure gives a brief resume and statement of philosophy of the teachers and emphasizes the significance of Jesus Christ and God in the education of the children. *Id.* The "Spiritual Development" of St. Stephen's students pervades the entire student body, Catholic as well as non-Catholic:

SPIRITUAL DEVELOPMENT:

Liturgies: Each class participates in one class liturgy each week. Students prepare the liturgy, select songs, write a commentary and the Prayers of the Faithful, do the readings of the day, serve the Mass. Each month the entire school comes together to celebrate a liturgy centering around Holy Days, major feasts, liturgical or civil celebrations.

Paraliturgical Celebrations: Advent services in which the entire school comes together are celebrated daily. Throughout Lent, classes participate in weekly Stations of the Cross. Each May, the students plan the parish May Crowning of Our Lady.

Prayer: Daily prayer as a group is conducted in each class. Traditional prayers, as well as various forms of prayer are introduced.

Sacramental: Daily reinforcement of Religious Formation Program at sacramental instruction.

Exhibit 11 (emphasis added). No distinction is made between Catholic and non-Catholic students.

32. Mr. Jaksa testified that the statements printed under his name and picture were written by him (although not specifically for the brochure) and accurately reflect the philosophy of education at St. Stephen's School:

Catholic School Education is essential in developing active, conscious Catholics who will lead today's society into a renewed family unit. St. Stephen School attempts to create a family atmosphere of caring and sharing. This community of faith serves as a witness to the uniqueness of God's creation. Each child has special needs and concerns. The curriculum and approach to learning centers around the child. It is my goal as administrator to lead the school and direct the energies and talents of the staff to serve the child and help him/her take a leadership role in family, church, and community as he/she enters society as an active member. Id.

33. The last of the Catholic elementary schools to be discussed is St. Andrew's. The sole exhibit relating to this school is an enrollment form, which, among other questions, asks whether the student is a "registered, supporting member of St. Andrew's Cathedral", the religion of the mother and father, and the place where the child was baptized. *Exhibit 25.* Although there was no testimony concerning St. Andrew's School to supplement the enrollment form, membership in St. Andrew's Cathedral is a factor in assessing tuition, if not enrollment.

34. The testimony and exhibits establish that the Catholic High Schools that receive Shared Time classes are pervasively sectarian. Edward Wagner, Principal of West Catholic High School, testified that all of the clergy teachers and 95% of the lay teachers are Roman Catholic. He and his Assistant Principal, Richard Cebelak, are also Roman Catholic. To the best of his knowledge, Mr. Wagner stated that 90% of the 1,130 students at West Catholic are Roman Catholic. The remaining 10% include Lutherans and Methodists.

35. Four credits out of a total of twenty are required in Religious Studies at West Catholic for graduation. *Exhibit 23* at "a." Under cross-examination by Mr. Hubbell, attorney for the Intervenor-Defendants, Mr. Wagner testified that religious instruction at West Catholic examines and treats other major religions in a fair manner. Ministers from other faiths appear from time to time to lecture the students. The purpose of the Catholic school, he continued, is to prepare the whole person for life, and not to "inculcate" religion into the students.

36. Nevertheless, Mr. Wagner did testify that freshmen at his school study the Old and New Testaments from a Catholic perspective. When asked by Plaintiffs' counsel if he agreed that his school is merely Christian and not intensely Catholic, he did not agree. The West Catholic Student Handbook states the following:

This sentence from our department's philosophy sums up the ideal we see ourselves about: by imparting "the MESSAGE of CHRIST academically and pastorally CHRIST will create a COMMUNITY OF SERVICE here at West."

Exhibit 24 at 18. (emphasis in original). Religious studies are required. *Id.*

37. The most impressive evidence of the sectarian character of West Catholic High School lies in the booklet describing its programs. The Introduction to *Exhibit 24* summarizes the variety of course and athletic offerings at West Catholic. In the opening and closing paragraphs, it states the following about the integration of religion into the curriculum:

West Catholic features sound moral and religious values rooted in our Catholic, Christian heritage. Our students are shown a direction and meaning for life during their most critical years. To guide them in these critical years is *a carefully screened faculty and administration* made up of lay and religious men and women, *dedicated to the principles of Catholic education*. Several priests from surrounding parishes add a special dimension and variety to serve the sacramental needs of our school community.

....

Every year hundreds of young Catholics and their families turn to West Catholic for an atmosphere that encourages EXCELLENCE, INVOLVEMENT AND SPIRITUAL GROWTH AS A WAY OF LIVE. [sic] *Exhibit 24* at 1. (emphasis added)

38. Furthermore, the "Coordinator of Religious Activities" is not segregated from the day-to-day activities of the students, but an integral part of student life:

It is widely recognized that Catholic schools are to be communities of faith in which the Christian message, the experience of worship, community and social concern are integrated in the total experience of students, their parents and members of the faculty. (National Catechetical Directory)

The primary purpose for the existence of West Catholic High School is the total Catholic Christian education of

its students. It is the duty of the Coordinator of Religious Activities to oversee *this most important work of the Church* in as many areas of student life as possible. The Coordinator of Religious Activities is an example of the Good News of Jesus Christ and is a living witness of the Christian life style.

The Coordinator of Religious Activities provides a continuity by being an extension of the parish in the school community. This person will work in conjunction with the priests and the DRE/Youth Minister of the parishes for the purpose of high school student involvement in the parish where possible. In addition and in as far as possible this person will be visible for the events which involve student life or activities, whether of a spiritual, academic, social or athletic nature.

From this office come the coordination of spiritual exercises, including:

- All-school Masses
- Class Masses
- Sacrament of Reconciliation
- Special Paraliturgical services
- Retreat arrangements
- Faculty Faith Days
- Religion class speakers

In this way, the precious heritage of faith which is taught and professed is expressed in worship.

Sister Leorita Huver, IHM
Coordinator of Religious Activities

Exhibit 24 at 2. (emphasis added); see *Exhibit 23* at 23-25.

39. Jim Chesla, a Shared Time instructor in "Math Topics" (a remedial course in mathematics), testified that in each

classroom there is a speaker that is used for morning prayer as well as for public announcements. The speakers must be turned off in the Shared Time classes. *Testimony of Jim Chesla; Exhibit 21* at 11-4, ¶1.

40. Deacon Dale Hollern, Principal at Catholic Central High School, states in the Introduction to the 1981-82 and 1982-83 Curriculum Guides that "Catholic education is unique, since its very foundation was established from the teachings of our Divine and all Supreme Teacher, Jesus Christ." *Exhibits 21 and 22*. Of the twenty-one units that are required for graduation, four must be in Religious Education. *Exhibit 21* at 3; *Exhibit 22* at 3.

41. Out of 909 students enrolled at Catholic Central during the 1981-82 school year, 877 (over 95%) are Catholic. *Exhibit 34*. Out of forty-six Assistant Principals and teachers, forty-one are Catholic. *Id.* The Curriculum Guides for the 1981-82 and 1982-83 school years require that students complete four years of daily attendance in a Religion class. *Exhibits 21 and 22* at 3. Those students "who can clearly demonstrate that they are active members of an established religion other than Catholic" may arrange to receive religious instruction in their own church. All students must receive religious instruction regularly and "progress reports" must be submitted to the Principal of Catholic Central. *Id.* Mr. Hollern testified that the six or seven students who have availed themselves of this exception have complied with the directive. Thus, even among the 5% of students who are non-Catholic, nearly all are participating in the Catholic religious program.

42. Mr. Hollern further testified that the statements about the Coordinator of Religious Affairs articulated in the Curriculum Guide are an accurate portrayal of the philosophy of the school. *Exhibit 21* at 11-4. Because of its importance

in describing the religious environment of Catholic Central, it is reported here in its entirety:

It is widely recognized that Catholic Schools are to be communities of faith in which the Christian message, the experience of worship, community and social concern *are integrated in the total experience of students, their parents, and members of the faculty.* (*National Catechetical Directory*)

In fulfilling *this directive of our American Bishops* it is of primary importance that the School provide a spiritual ministry for the students, their families and the staff. We have a Religious Sister appointed to our administrative staff whose task is to plan, direct and coordinate the religious affairs of the school. This Sister, known as the Coordinator of Religious Affairs, works closely with the administration of the school and the Religion Department to provide a favorable spiritual, psychological and pedagogical environment for the students and staff.

Specific duties of the Coordinator will include:

- 1) leading morning prayer over the public address
- 2) arranging for priests to come to the school:
 - to celebrate the Sacraments of Eucharist and Reconciliation
 - to speak to student groups/religion classes
 - to provide spiritual counseling
 - to meet with parish youth on site
 - to participate in school activities
- 3) preparing for All-School Masses
- 4) scheduling individual Class Masses
- 5) making available retreat opportunities/days of recollection

- 6) planning Community of Faith Days for staff
- 7) participating in Religion Department meetings
- 8) visiting the hospitalized/homebound
- 9) developing means of fostering religious vocations

We consider the above spiritual ministry of the school of paramount importance to the attainment of the spiritual objectives of Catholic Central High School. *Id.* (emphasis added).

43. Documents such as the *National Catechetical Directory* and *To Teach as Jesus Did* that have been previously discussed are used as a "foundation for curriculum building". *Exhibit 21* at 11. The description of objectives and religion courses in the catalog establishes that religious education at Catholic Central is not merely a disinterested look at the teachings of the Catholic Church, but a matter of religious faith and commitment. An overall description of the Religion Department at Catholic Central can be found in the Curriculum Guide. *Exhibit 21* at 11 to 11-4.

44. Exhibits 37 through 41 are resumes of five members of the Board of Directors of the Catholic Interparochial High School. Some of the resumes contain a short paragraph expressing the Board member's educational philosophy. Robert E. Agents, for example, asserts that:

A Catholic education should focus on three goals. *First, it should develop a greater understanding in the student of his or her relationship to God.* Second, it should instill self-discipline in the student and heighten the students self-respect and respect for other persons. Third, it should provide the best possible education for the student. This final goal should be a mixture of the basic educational needs of the student, while at the same time afford the

student with a wide range of future educational and/or employment options. *Exhibit 39* (emphasis added).

Mary R. Robach expresses her "Philosophy of Catholic Education" in these words:

I believe strongly in Catholic Education. I know that we as parents are the primary educators of our children especially in their Religious training. The school backs up and supports us in this duty. The whole atmosphere at a Catholic School in every subject is of prime importance. Religion is not just a class they take, it is a total way of life that can be taught our children best in a Catholic School. *I do not want my children to be taught a secular Religion in a Public School. I want them to be taught the Catholic Religion in a Catholic School. Exhibit 41* (emphasis added).

The opinions of Patricia Ryan (*Exhibit 37*) and Thomas J. Lewkowski (*Exhibit 38*) express similar sentiments.

45. The organic relationship of the Catholic high schools to Catholic Church hierarchy is found in the "Articles of Association" of the Catholic Interparochial High School Association revised and adopted on October 22, 1975. *Exhibit 44*. Article III of this exhibit reads:

The purposes for which the Association is formed are as follows:

To establish, build, maintain, conduct and operate Catholic high schools within or adjoining Kent County, Michigan, for the benefit, welfare, and education of secondary school children in said schools, all in accordance with the requirements of the National Compulsory Education Act and the applicable laws of the United States, the State of Michigan

and any other governmental bodies which have jurisdiction, *and subject to the direct or indirect jurisdiction of the Bishop of the Roman Catholic Diocese of Grand Rapids*, and to buy, sell, hold, lease, own, occupy, manage and control real estate and personal properties and funds which may be needed for the foregoing purposes, all without profit to any of the members thereof. (emphasis added).

46. Article VI provides that "[m]embership in this Association shall be limited to the Bishop and Auxiliary Bishop(s) of the Roman Catholic Diocese of Grand Rapids; the priests and religious located in or adjoining Kent County, Michigan which the Association serves, and lay persons registered in parishes located in or adjoining Kent County, Michigan, which this Association serves." Article XIV of the Bylaws of the Board of Directors of the Catholic Interparochial High School Association provides that any act of the Board of Directors may be vetoed by the Bishop of the Roman Catholic Diocese of Grand Rapids. *Exhibit 45* at 8.

47. The Bylaws of the Board of Directors of the Catholic Interparochial High School Association (*Exhibit 45*) provides in Article II for a Board of Directors of seventeen members consisting of the following:

The Bishop of the Roman Catholic Diocese of Grand Rapids or his representative

Five Catholic Priests

One Dominican Sister of Marywood

One from the School Sisters of Notre Dame

Nine lay men or women elected from the parishes which pay assessments to one of the two Catholic High Schools

48. Deacon Dale Hollern testified that all nine lay members of the Board of Directors of the Catholic Interparochial

High School Association are Catholic. The remaining eight are members of the clergy or members of religious orders of the church. All seventeen current members of the Board of Directors are Catholic by religion.

49. Article XIV of the Bylaws of the Board of Directors of the Catholic Interparochial High School Association (*Exhibit 45*) gives to the Bishop of the Roman Catholic Diocese of Grand Rapids a right of veto over any act passed by the Board of Directors. Article XVI provides that the Bylaws shall become effective only after written approval thereof by the Bishop of the Roman Catholic Diocese of Grand Rapids.

B. The Christian Schools

50. Bylaws governing the six schools of the Grand Rapids Christian School Association were admitted as Exhibit 77. The doctrinal creed of the Association appears on the first page:

Section 1.3 Basis. The supreme standard of the Association shall be the scriptures of the Old and New Testament, herein confessed to the the [sic] infallible Word of God, *as these are interpreted in the historic Reformed confession:* The Belgic Confession, Heidelberg Catechism, and Canons of Dort.

Acknowledging that that [sic] these Scriptures, in instructing us of God, ourselves, and God's creation, contain basic principles authoritative and relevant for education, we hold that:

- (a) The authority and responsibility for education [sic] children resides in the parents or guardians of the children and not in the state or the church. Parents, however, may delegate their authority to those who can competently carry out this God-given parental right.

- (b) The primary aim of a Christian parent is [sic] securing the education of his child should be to give him a Christian education—that is, an education whose goal is to equip the child for living the Christian life as a member of the Christian community in contemporary society.
- (c) Christian parents, when delegating the authority for educating their children, should delegate it to those institutions which seek to provide Christian education for the student.
- (d) The responsibility for maintaining such institutions rests on the entire Christian community.
- (e) The Christ proclaimed in the infallible Scriptures is the Redeemer and Renewer of our entire life, thus also of our teaching and learning. *Consequently in a school which seeks to provide a Christian education it is not sufficient that the teachings of Christianity be a separate subject in the curriculum, but the Word of God must be an all-prevailing force in the educational program.* (emphasis added).

It is undisputed that the application form for admission to the Christian School Association requires the parent either to subscribe to the Basis or to agree to have his Children taught according to the Basis principles. *Exhibit 68.*

51. In the Agreement of Consolidation of the Grand Rapids Christian School Association, admitted into evidence, the purpose for which the corporation was formed is as follows:

To acquire, establish, maintain and operate Christian schools furnishing primary and/or secondary education; to grant diplomas to its students who merit the same; to determine and establish curricula in which instructions shall be based upon the infallible Word of God *as interpreted by the Reformed faith*, together with courses of

study as may be approved or specified from time to time by the Board of Trustees; to determine the qualifications of and to hire faculty and administration staffs; to select, acquire and furnish textbooks, educational materials, supplies and equipment; to plan and provide for the expansion of Christian Education in the schools which it controls, and to acquire by purchase, gift or otherwise, such real and personal properties as may be necessary or advisable to promote and carry out the objects of this corporation. *Exhibit 76 at 2 (emphasis added).*

Clearly, the importance of the "Reformed faith" is paramount in the Christian schools. The Bylaws and Consolidation Agreement govern the operation of the schools within the Grand Rapids Christian School Association, including Grand Rapids Christian High School, Creston-Mayfield Christian School, Millbrook Christian School, Oakdale Christian School, Seymour Christian School, and Sylvan Christian School. *Testimony of William Gritter.*

52. The Bylaws of the Grand Rapids Christian School Association provide in Section 2.2 the qualifications for membership in the Association. A person must be 18 years of age or older, must be a financial contributor to the Association or have one or more children attending a school of the Association, and must subscribe to the "Basis" set forth in Section 1.3 of the Bylaws (quoted above).

53. This "Basis" recites in specific terms the religious doctrine which members of the Association are required to accept. Clearly, it is Christian theology of a very restricted character. Indeed, this Association, which restricts membership to those who subscribe to the "Basis" which is spread upon the first page of its Bylaws, itself satisfies the definition of a church, being "a body of Christian believers having the same creed, rites, etc."

54. William Gritter, Superintendent of Schools of the Grand Rapids Christian School Association, testified as to the close identity between trustees of the Association and membership in the Christian Reformed Church. This testimony was elicited in an effort to prove that the Christian Reformed Church effectively operates and controls the schools of the Association. Whether or not that is strictly true, it is clear that the Association itself could be considered a church in the definitive sense.

55. Superintendent William Gritter testified that all current members of the Board of Trustees of the Grand Rapids Christian School Association are members of the Christian Reformed Church. These 12 trustees have general authority, power, and responsibility with respect to the educational policies of the six schools operated by the Association. *Exhibit 77 at § 6.1 of Bylaws.*

56. Each of the six schools of the Association has a separate, local board which is advisory to the Board of Trustees of the Association. *Exhibit 77 at § 5.3 of Bylaws.*

57. Trustees of the Association and members of the local boards of the six schools are elected by members of the Association, who may be parents of children enrolled in the schools. However, a person may be a voting member of the Association without having children in any of the schools of the Association. *Exhibit 77 at § 2.2 of Bylaws.*

58. Exhibits 67, 69, 70 and 71 list the incumbent board members and all persons who were candidates for any of the Christian School Boards during the past three years. Analysis of these reveals that there were a total of 127 candidates nominated for the six local boards in the past three years. Of these 115, or 91%, were members of the Christian Reformed Church. Another six, or 5%, were members of the

Reformed Church in America. The remaining six nominees were members of other Christian churches.

59. There were seventy of these nominees elected to the local boards of these six Christian Schools. Of these, sixty-four were members of Christian Reformed churches and three of Reformed Churches in America. Thus 95.7% of the incumbent members of the local boards are members of the Christian Reformed Church or Reformed Church in America. *Exhibits 67, 69, 70 and 71.*

60. The three-year enrollment history by church denomination contained in Exhibit 72 establishes that for the past three school years, 88% of the student body of the Grand Rapids Christian School Association has belonged to the Christian Reformed Church or the Reformed Church in America.

61. In the handout for Grand Rapids Christian High School, it states that the "administration and staff are committed to providing quality, God-centered education in an atmosphere where Christian virtues are emphasized. . . . Christian High School's goal is to give students an education that is Christian. Students are encouraged to develop values grounded in the knowledge of their relationship to God, to themselves, and to their fellow human beings. In an environment that reflects Christian commitment, the school promotes worthy scholarship, serious effort, and a desire to develop God-given abilities to full potential." *Exhibit 64 at 1.*

62. Kenneth Zandee, who is a Shared Time physical education instructor at Grand Rapids Christian High School, testified that in his other capacity as coach of the Christian High School basketball team he conducts a prayer before each game. Mr. Zandee is a member of the Christian Reformed Church and, as a parent of children enrolled in the Christian Schools, has subscribed to the "Basis". *Testimony of Kenneth Zandee.*

63. The handouts for the Oakdale, Sylvan, Seymour, and Millbrook Christian Schools state that they teach their students that

The Bible is the infallible and inspired Word of God

Jesus Christ is Lord of all Creation

Service to others is required of all who believe in Jesus Christ

Each person has talents given by God to develop and use to their full potential. *Exhibits 60-63.*

64. The handout describing Creston-Mayfield Christian School's attitude toward religion states that its "school board and staff are committed to providing quality, *God-centered education in the Calvinistic, Reformed tradition.* . . . Creston-Mayfield's students come from many different denominations. Christian parents who express their commitment to Christian education are welcome to enroll their children. They will be accepted without regard to *race, color, national or ethnic origin.*" *Exhibit 59 at 1 (emphasis added).* "Religion is conspicuous by its absence in this and all other Christian School handouts. *Exhibits 59-60.*

65. Among the "Basic Principles" in the handout are the following:

1. The Bible is the inspired and infallible Word of God.

2. God is triune, Father, Son, and Holy Spirit.

3. Jesus is God the Son. He was born of the Virgin Mary, died on the cross for our sins, ascended to heaven and is someday coming again.

4. Jesus Christ is Lord of our personal lives and the universe in which we live.

5. The Bible is the foundation of our philosophy of Christian education.

6. Each child is a unique image-bearer of God and possesses talents and abilities which must be developed to his or her potential.

7. Primary authority and responsibility for educating children rests with parents, not with the state. *Exhibit 59 at 1.*

66. In an open letter to parents in its 1981-82 Handbook, the Administrator of Creston-Mayfield Christian School stated the following:

September, 1981

Dear Parents,

You have decided your children should be educated in a Christian School. This decision was an important one not only because of the large financial commitment but because it meant you wanted your child educated from a particular Christian point of view.

The school board and staff of the school are committed to the proposition that Jesus Christ is Lord of all creation. This means that He is Lord of our classroom, Lord of our homes, Lord of the world of work, and Lord of our leisure time. We are mandated by Him to care for His world. To us that means applying Biblical truth to social problems, economic problems, political problems, and environmental problems.

With this purpose before us we educate His children. Let us be sure we do not confuse this purpose with winning souls for Christ. Oh, we want our children to know Jesus as Lord of their life, but the school's *primary* function is to teach children to be caretakers of the Master's kingdom.

With this purpose in mind I have prepared this handbook. A Christian community united in purpose can best accomplish its task if the guidelines are clear. I hope you will review it and discuss it with your children. It is my prayer and the prayer of our entire staff that this year may be a blessed one for you and your children. The staff of Creston-Mayfield pledges their support to you in your task as parents. We covet your support and prayers as another school year begins.

Sincerely, In His Service,

/s/

Roger Roskamp

Exhibit 52 at 1 (emphasis in original).

67. Various officials of the Grand Rapids Christian School Association, particularly Mr. William Gritter (Superintendent of the Association) and Mr. Ronald Boss (Principal of Oakdale Christian School) have not disavowed any of the statements of philosophy or purposes concerning the religious mission of the Association that are contained in the exhibits discussed so far. As a matter of fact, the Christian School Association has gone out of its way to publicize the sectarian character of its member schools. Consider Exhibit 65, for example. This is an advertisement placed in the Grand Rapids Press by the Grand Rapids Christian School Association containing the banner headline, "CHRISTIAN SCHOOLS BELIEVE THAT GOD MADE EVERYTHING". It continues: "That's why they see Him in MATHEMATICS . . . and HISTORY . . . and SCIENCE and ENGLISH -- and all the other subjects they teach." It is difficult to conceive of a more pointed reference to the Association's philosophy of integrating religion into the curriculum than this. A specific application of this principle is explained in the April 1980 "Newsletter" of the Grand Rapids Christian School Association in a short article entitled, "A Special Project":

After studying the human body for an entire semester, the seventh graders at Millbrook worked on a project to bring together all they had learned.

Mr. Brower and Mr. Sweetman provided each team of students with a large piece of paper on which they traced an outline of their own body. They then began the task of selecting organs and systems to add to this outline. After research into the size, shape and color of the organ, they cut it out of construction paper and glued it to their outline. Students were frequently surprised to find that their first estimate of the size of a particular body part was very far from correct. Upon looking at "George", our anatomical model, and feeling their own body, they soon discovered how to proportion the various organs.

This project proved to us the truth of Psalm 139:14; "Thank you for making me so wonderfully complex! It is amazing to think about. Your workmanship is marvelous — and how well I know it." *Exhibit 75* at 3.

68. In a thirty-minute television program sponsored by the Grand Rapids Christian School Association and aired on WOTV April 20, 1982, the Association took special care to emphasize the fundamentally religious mission of the Christian Schools. The following paragraph is merely illustrative of the type of commentary that permeates the program:

Mr. Bolton [Narrator]:

Obviously the teacher in this class shares the values of the parents in these children's homes, and the lessons taught here each day are the same ones that the students learn in church and at home. With things like opening in prayer and an hour of Bible study everyday are not the primary reasons parents spend thousands of dollars to send their

children to Christian Schools. *At the heart of Christian education is a commitment to Jesus Christ. Parents see the world from that perspective and they want their children to be taught that same vision. The school is a partner with the home and the church in teaching the values, the attitudes, the ideas and the goals that Christian commitment demands.* In every part of the learning process, in every class, in every activity, children are taught to keep Jesus Christ at the center of their lives. Teachers in these schools know they are molding young lives, not only for decades but for eternity. *Exhibit 82* at 2 (emphasis added).

(It is worth noting that Mr. Gritter testified that parts of the program were planned and rehearsed—cue cards were used, for example. As such, it effectively amounts to an official statement of the Association. *Exhibit 83*, in fact, is an advertisement placed by the Association on the eve of the "television special" to call attention to its fund drive.)

69. Teachers, administrators, and students share the belief that God is not separable from the classroom. As one teacher, Carole Barber, put it:

Our whole philosophy of our Christian living is based on what we teach the children and so forth. We're preparing the children for a Christian life in a community in a contemporary world, and everything that we do has to be based on Scripture, and values and morals that I teach will be based on Scriptures, and I think that can be intertwined in everything that I teach—very specifically in Bible lessons, of course, and Devotions, but we're teaching the children love and patience and kindness and so forth, and I guess I feel that that has to be their whole outlook on life and that's intertwined in everything that we do. *Exhibit 82* at 2-3.

And Teacher Connie Vanderwell:

I would hope that we're not just teaching for education, but we're teaching for the whole child—for his spiritual development, for his social development and, of course, for the academic development and we hope that that will have a long-range lasting effect on the student. *Id.* at 3.

The ensuing exchange between the Narrator and several students reads as follows:

MR. BOLTON: This is what students told me about attending a Christian School:

STUDENT: A good atmosphere for me to be in and *everybody has the same mutual belief in how to live their lives and we all believe in the Christian faith and so we can talk about it with each other.*

STUDENT: Oh, because it's Christian and I learn lots of things in the school. I learn some hard things and it's kind of a challenge and to see if I can do everything.

MR. BOLTON: Do you think going to a Christian School is better than, say going to some other school?

STUDENT: Yeh.

MR. BOLTON: Why?

STUDENT: Because you learn about God and you wouldn't learn about God in like public schools or anything.

MR. BOLTON: You like to learn about God?

STUDENT: Mm. Mh. *Id.* (emphasis added).

70. The Parent and Student Handbook for Oakdale Christian School reiterates the "Basis" of the Grand Rapids Christian School Association. *Exhibit 46* at 1. Of the 18 full-time teachers at Oakdale, 16 are Christian Reformed, 1 is Pentecostal, and 1 Episcopalian. *Testimony of Ron Boss (Principal of Oakdale Christian School)*. Mr. Boss also testified that 9 of the approximately 220-240 students come from the Reformed Church. The balance comes from the Christian Reformed Church. He agreed that the first and last pages of *Exhibit 46* accurately reflect the philosophy at his school.

71. Seymour Christian School's Staff and Parent Handbooks reiterate the "Basis" that is found in the Bylaws of the Christian School Association and list seven characteristics of "A Christian Teacher," two of which follow:

1. A Christian teacher is first of all a servant of his Lord and Savior. His concepts of God, man, and the world find their authority in the Bible. *His doctrinal stance requires that he interpret his subject matter from a Christian point of view.* His emotional maturity, intellectual competency, and spiritual vibrancy is obvious. His task is to teach God's children about God's world in the light of God's word.

....

3. The Christian teacher sees his students as image bearers of God who will be active in His Kingdom now and forever. He will use every means available to give his students this perspective. He will be a living example of Christian behavior. *He will conspicuously teach Christian virtues.* He will promote a Christian sense of values in his classroom by teaching respect for authority, respect for the property of others, desire to cooperate, enthusiasm for work, concern for others,

and most importantly, submission to the Lordship of Christ. *The teacher will be sensitive to his student's academic and spiritual needs. Exhibit 47 at 7 (emphasis added).*

The Parent Handbooks of Sylvan and Millbrook Christian Schools also reprint verbatim the "Basis" for Christian Schools. *Exhibit 49 at 3; Exhibit 50 at 6. See Exhibit 77 at §1.3.*

72. The Grand Rapids Baptist Academy comprises five facilities in the greater Grand Rapids area. None of these par-takes of the Shared Time or Community Education classes offered to them by the Grand Rapids Public Schools. Mr. George Berends, Executive Director of the Grand Rapids Baptist Academy, testified that the Board of Trustees rejected the offer of the public school classes because it felt that the Academy teachers would not be able to carry out their religious mission. To enroll, a student's parents must be "born again," commit their lives to Jesus Christ, and be faithful in church attendance. Mr. Berends testified that the primary purpose of the Baptist Academy is to let students know God. All classes contain some elements of religion. *See Exhibit 9 at 7-11.*

73. On redirect examination, Mr. Berends agreed that the following sentence, drawn from the "Basis" that can be found in every Christian School publication, accurately represents the philosophy of the Baptist Academy:

Consequently in a school which seeks to provide a Christian Education it is not sufficient that the teachings of Christianity be a separate subject in the curriculum, but the Word of God must be an all-pervading force in the educational program. *Exhibit 77 at §1.3(e). Also Exhibits 51 and 52.*

Consequently, although Grand Rapids Baptist Academy has the same philosophy of integration of religion into the classroom as the Christian, Catholic and Lutheran Schools, the Executive Director felt compelled to reject Shared Time classes because they would conflict with the Academy's religious mission. The Intervenor-Defendants have sought to characterize the Grand Rapids Baptist Academy as a uniquely sectarian institution; however, the preceding testimony of Mr. Berends establishes that the Academy's philosophy of intergrating religion into the classroom is similar to that of the Christian Schools and other religious schools.

74. Although West Side Christian School is not a member of the Grand Rapids Christian School Association, it adheres to the same tenets of the Reformed faith. The opening paragraph of the "Statement of Purpose and Basis of the West Side Christian School" reads:

West Side Christian School has been established, as the constitution states, "to maintain a Christian school for the instruction in the subjects of elementary and junior high school grades." The constitution states, "*The basis of the Society is the Word of God as interpreted by the three forms of unity: The Belgic Confession, The Heidelberg Catechism, and The Canons of Dort. Thus being committed to the Reformed World and Life View, the educational principles of the Society must, therefore, be distinctively Christian in emphasis and character.*" *Exhibit 7 at 1 (emphasis added).*

The underscored portion of the preceding quotation is identical in all essential respects to the "Basis" of the Grand Rapids Christian School Association. *Finding of Fact 50; Exhibit 77 at §1.3.* Furthermore, these statements "are the foundation for the Basis, Authority and Purpose of our Christian Education." *Exhibit 7 at 1.*

75. The "Basis", "Authority", and "Purpose" are explained as follows:

The Basis and standard of the West Side Christian School shall be the Scriptures of the Old and New Testament, *confessed to the infallible word of God as these are interpreted in the historic confessions.*

The Authority and responsibility for educating children resides in their parents or guardians. Within this responsibility, parents may delegate this authority to West Side Christian School to carry on the education process in accordance with the above-stated basis. The right to exercise discipline is then also delegated to the school, while the parents retain the right to discuss matters of discipline with the faculty and administration, and may appeal to the school board for final disposal of differences of opinion when all other means to achieve agreement have been exhausted.

The Purpose of Christian Education at West Side is to provide a God-centered education to children of Christian parents and no child of Christian parents shall be denied admission *on the basis of race, color, sex or national origin.* In order to provide this education for our children, *all aspects of education must be permeated with a Christian perspective, based on the Word of God.* *Id.* (emphasis added).

76. The remainder of the handout for West Side Christian School, indeed the entire description of the school, emphasizes the commitment and vigor with which religion is incorporated into the daily life of the students. *Id.* at 1-2. Ending with three verses from the Bible, the handout provides space for the parent to acknowledge and concur with this commitment to Christian education: "I have read these statements and

concur that my child/children should be educated according to these principles and ideals as stated." *Id.* at 2. By requesting parents to submit to the principles in the Statement of Purpose and Basis, West Side Christian School has restricted admission based upon adherence to a particular religious faith. Indeed, the application for admission requests the family's church affiliation, attendance record at church, and a brief essay stating the reasons why the parents want their child "to receive a Christian Education." *Id.* at 5. The form does not ask why the parents want to attend the West Side School; it asks the transcendent question of why they want their child to receive a Christian education.

C. The Lutheran Schools

77. The Lutheran schools that have accepted Shared Time classes are described by reference to Exhibits 12-18 and the testimony of Kraig Johnson, Principal of Immanuel-St. James Lutheran Schools. These schools are located on sites which also contain Lutheran churches. As to the religious affiliation of the school staff, Mr. Johnson, his Assistant Principal, and the Secretary (who is employed by the Lutheran Church) are all Lutheran. All five of the teachers are Lutheran. The joint school board (three lay members apiece from St. James and Immanuel Churches) is Lutheran. Mr. Johnson testified that only 1/6 to 1/8 of the student body is non-Lutheran. *Testimony of Kraig Johnson.*

78. Mr. Johnson testified that non-Lutherans may attend Immanuel-St. James as freely as Lutherans. The handouts and brochures that are passed out to those interested in the school, as well as Mr. Johnson's own testimony, contradict this point of view. The literature available to parents interested in Lutheran Schools is incorporated into a packet and sent to them. *See Exhibits 12-18.*

79. The religious flavor of the Immanuel-St. James Schools is evident throughout the handbook describing their programs and philosophy, beginning with this: "Immanuel-St. James School is not a private affair. It does not belong to teachers, or parents, or children, or voters' assemblies. Immanuel-St. James Lutheran School is God's. It is God's mission." *Exhibit 18* at 3. The Immanuel-St. James "Credo on Christ Education" integrates these beliefs into the education of the students:

WE BELIEVE that Christian education is a vital aspect of the Church's mission, commanded by God through the Great Commission.

WE BELIEVE that Christian education is directed toward the total development of people, providing for their spiritual, intellectual, emotional, social and physical needs.

WE BELIEVE that Christian education is a responsibility of all believers toward all people.

WE BELIEVE that the purpose for Christian education is to teach the Christian faith through

(a) instruction in God's word

(b) living in relationships of love and forgiveness.

WE BELIEVE that an effective program of Christian education is based on a distinct theology and determines its curriculum by taking into account current world conditions.

WE BELIEVE that effective education is achieved as quality learning programs relate the Christian faith in every aspect of life.

WE BELIEVE that the family exerts much influence on a child's total education, and that the church must equip adults for their important role in Christian education. *Id.* at 5 (emphasis added).

80. There are five "distinctive features" of Immanuel-St. James which characterize the school:

1. GOD AND HIS WORD ARE CENTRAL

The Holy Bible influences all lessons and activities in our Christian Day School. Through Scripture the Holy Spirit works to increase the child's understanding of himself, his purpose, his destiny, and his Lord.

2. THE CHILD RECEIVES THOROUGH, SYSTEMATIC INSTRUCTION IN THE TEACHING OF CHRISTIANITY

Christian teachers lead the child in daily study of God's word and in prayer and worship. Particular attention is given to clarifying the story of sin and salvation. *In addition, the pupil is trained to practice his Christianity.* Guided by teachers and fellow pupils, he grows in Christian knowledge, attitude and conduct.

3. THE CHILD RECEIVES A THOROUGH TRAINING IN THE COMMON SCHOOL SUBJECTS

The child is instructed in all the common school branches of learning, as prescribed by the state. *But all such instruction is given from a Christian point of view. The child is thus protected from the dangers of a purely secular schooling.*

4. THE CHILD LIVES IN A CHRISTIAN ENVIRONMENT

The devil constantly seeks to undermine the Christian's faith. The importance of school environment, therefore, is not to be underestimated. True, misunderstandings and incidents of misbehavior and con-

flict will occur in this school also . . . But the power of sin is lessened when Christian teachers and children live in intimate relation with their Lord, and in loving concern for one another's growth in holy living.

5. THE CHILD GROWS INTO HIS CHURCH

More and more active workers in the local congregation and in the church at large are needed. Leaders, pastors, teachers, and lay persons—must be developed to guide the church's work. Members who remain faithful to the Lord, and who are wise stewards of their time, abilities, and possessions, are essential. *Immanuel-St. James Lutheran School trains children for just such roles. Exhibit 18 at 6 (emphasis added).*

81. Despite the attempt by Mr. Johnson to disassociate his school from any religious restrictions on admission, the fact remains that preference is given to Lutherans. As the "Admission Policies" state:

7. Members of the sponsoring congregations are given first opportunity to enroll their children. Children of non-member families are accepted on the following basis and availability of space:

- a. Children from sister congregations;
 - b. Children from other Lutheran churches;
 - c. Children from other Christian churches;
 - d. And others who desire a Christian education.
- Exhibit 17 at "Admission Policies."*

The religion affiliations of both the parents and student are requested on the application for admission. *Exhibit 17.* Furthermore, the schools' disavowal of discrimination on the basis of "race, color, national and ethnic origin" conspicuously omits religion. *Exhibit 18 at 9, ¶10.*

82. Even more significant, however, is the following paragraph from the Immanuel-St. James policy handbook:

Confirmation classes, which have traditionally been a part of the seventh and eighth grade curriculum, will be held two mornings out of the week for those who anticipate membership in our congregations. *Non-member children are to attend the classes to achieve greater understanding of the Gospel as understood by the Lutheran Church—Missouri Synod. Id. at 8 (emphasis added).*

Teachers at Immanuel-St. James Lutheran School "meet all the requirements of Synod for it's [sic] parochial school teachers and the requirements of the State of Michigan, Department of Education." *Id.*

83. The pamphlets publicizing Immanuel-St. James are replete with examples of the interconnection between the school and religion. One finds that the "entire curriculum [sic] is fraught with Christian lifestyle, beliefs, and values." *Exhibit 13.* The "program of Christian education [is] based on the conviction that learning and living take on meaningful dimensions only when related to Christ." *Exhibit 16 at 1.* "[A]ll subjects are taught with a Christian approach and from a Christian point of view." *Exhibit 18 at 8.* "In keeping with the purpose of the school, the Bible forms the core and center upon which all instruction is based. Religious instruction in Scripture, Bible stories, prayers, and daily devotions form part of each day's program. As pupils progress through the grades, systematic study of the Bible, the chief Christian Doctrines, prayers and hymns help to make religion part of the young Christian's life." *Id.*

84. The goals of "Lutheran elementary education" are similar to sound public elementary education,

But it seeks to do this inside a different framework. Basic to a total education, we believe, is the development and growth of a spiritual outlook. This involves:

1. Leading the child to faith in the Lord Jesus Christ, and keeping him/her in that faith to eternal life in heaven.
2. Helping the child in Christian growth in all relationships of life, such as the family, the Church, the State, the relationship of friendship, of employment and labor, of art and culture.

These goals relate not only to this life, but to the world to come. They seek to lead the child along his/her earthly ways, through death, and into the eternal glories of heaven.

The Lord commands Christian parents to provide this care for their children's temporal and eternal welfare. At the same time the Church must seek the best means available to train its young. It has found this in the Christian day school. Here the total child can be trained to be a citizen of both earth and heaven. *Id.* at 4.

85. The Immanuel-St. James School staff keeps "attendance records" on church and Sunday school attendance "with the hope of encouraging regular attendance. Families of Immanuel-St. James Lutheran School are strongly encouraged to regularly attend their church and educational classes. Perfect church and Sunday school awards are given at the end of the school year." *Exhibit 18* at 15.

86. Lutheran schools are different in that the students "exhibit a more consistent belief in the divinity of Jesus," "do more witnessing to others about Christ," "are less swayed by their peers," among other attributes. *Exhibit 14*. A series of testimonials by parents of Lutheran school students reinforces

the school's official policy of combining the word of God with the learning environment. *Exhibit 15*. A brief "newsletter" mailed by the "Immanuel Lutheran Church and School" states that "Immanuel-Saint James Lutheran Day School was founded on the belief that the church shares in the responsibility of providing a thorough Christian training for all children, while it also strengthens and supports the parents in their efforts." *Exhibit 12*. In the kindergarten through Eighth Grade Day School, a "Christian atmosphere permeates the daily instruction of religion, language arts, math, science, art, music, and physical education." *Exhibit 12*. Significantly, art, music and physical education are *Shared Time* classes there. *Exhibit 90* at Interrogatory #79 and Attachment.

87. The connection between these Lutheran schools and the Lutheran Church is expressed in the handbook:

Immanuel-St. James Lutheran School is supported and run jointly by Immanuel Lutheran and St. James Lutheran Congregations. Our School is one of almost 1200 Lutheran Schools in the United States and one of 110 Lutheran Schools in Michigan.

The responsibility for the educational program at Immanuel-St. James Lutheran School rests in the hands of the Joint Board of Education. The Voters' Assembly of each congregation elects three of its members to serve on the Joint Board of Education. The pastors, principals, and assistant principal are advisory members to the Board. *Exhibit 18* at 7.

II. EXCESSIVE GOVERNMENT ENTANGLEMENT WITH RELIGION

88. Throughout the course of testimony in this trial, numerous interconnections between the Shared Time Program and the private religious schools have been established. The follow-

ing seven illustrations of excessive government entanglement with religion include the lease used by the Grand Rapids Public Schools, the means by which the Shared Time classes are desanctified, student body identity, teacher and staff identity, and coordination of Shared Time classes with nonpublic school schedules, political entanglement, and "miscellaneous contacts."

A. The Lease

89. The lease is the instrument by which the Grand Rapids Public Schools have gained access to rooms within private religious schools participating in the Shared Time and Community Education programs. It is a standard form that is used by all of the schools leasing space to the Grand Rapids Public Schools. *Exhibit HHH*. John Young, Director of the Shared Time program, testified that he contacts the nonpublic schools that participate in the program to determine which classrooms can be leased. Mr. Young then visits the nonpublic school building for a conference with the Shared Time teacher to see if the room provided is suitable. *Testimony of John Young*.

90. In none of the leases covering the forty-one (41) nonpublic schools, however, is there any mention of the particular rooms or space that the lease governs. During the course of the trial there was much testimony concerning the sites where Shared Time classes are held in a given school building. At Immaculate Heart of Mary, for example, Shared Time teachers and students occasionally use the library and corridors as well as the "regular" Shared Time rooms (the gym and cafeteria). When the teachers and students enter the library (which has not otherwise been designated as a Shared Time classroom), it becomes a "public school" classroom by the very fact of their presence. *Testimony of Sister Mish*.

91. The Grand Rapids Public Schools leases secondary school classrooms for \$10.00 per class per week and elementary school classrooms for \$6.00 per class per week. The amount

that Grand Rapids Public Schools has paid in lease fees to the nonpublic schools for 1981-82 amounts to around \$200,000. *Testimony of Elmer Vrugink*.

92. The lease does not by its terms restrict the Shared Time students or teachers from occupying any of the facilities in the nonpublic schools. Mr. Young's testimony that contacts are made with the nonpublic schools to determine what classrooms are "available" for the shared time classes does not establish whether other rooms are "off limits" or unavailable. Conceivably, rooms could be used that have not been "desanctified", as in the case of the classrooms used by Gwen Prong. Mrs. Prong testified that as a remedial and enrichment reading teacher, she visits various classrooms within West Side Christian School to diagnose the students' reading ability. She further testified that she carried her "public school" sign to rooms that have not otherwise been designated Shared Time classrooms and displayed the sign. *Exhibit EEE*. If she forgets to display it, she continued, her students would remind her. In certain instances, she must cover up religious symbols that are displayed in the non-Shared Time classes she is required to visit for diagnosis. Sister Mish testified that a remedial reading teacher at Immaculate Heart of Mary had to carry and display her sign when going from room to room.

93. There is an unreality to the distinction between the Shared Time classes and the nonpublic school classes that surround them. Both enroll students from the same nonpublic school, take place in the same building as the nonpublic school, and, in many cases, use the nonpublic school teachers and staff. The "public school" classes are public in name only. Substantively they are adjuncts to the private religious schools.

94. The lease is a fiction that turns what otherwise would be a nonpublic school classroom with nonpublic school students into a public school classroom with public school students.

B. Desanctification of the Shared Time Classes

95. The manner in which the Grand Rapids Public Schools has attempted to desanctify the Shared Time and Community Education classes can be generally summarized as follows: The classrooms are stripped of all religious artifacts and symbols. A sign states that the classroom is leased by the public schools. *Exhibit EEE*. This sign is placed inside the room on a wall; at the Immaculate Heart of Mary gymnasium, for example, the sign is posted on the south wall of the gym.

96. In cases where the Shared Time teacher visits the nonpublic school classrooms for remedial reading, she sets up a Shared Time class in that portion of the nonpublic school classroom by posting a "public school" sign. *Testimony of Sister Mish; Testimony of Gwen Prong*.

97. Upon occasion, some Shared Time teachers use the library of the nonpublic school for their reading classes although these are not designated as Shared Time rooms. *Testimony of Sister Mish; Testimony of Ann Barth*. Sometimes the teacher fails to display the sign and is reminded by her students to post it. *Testimony of Gwen Prong*. Gwen Prong, a Shared Time reading teacher at West Side Christian, testified that in her circuit of reading assignments she had to cover up religious symbols. Asked what kind of reaction that provoked from her students (sixth and seventh graders), she surmised that they figured she was an "atheist" or "strange". *Id.*

98. At West Catholic High School, Jim Chesla, a Shared Time teacher in "Math Topics" (a remedial mathematics course), testified that there is a public address system with speakers in the hallways and classrooms. Public announcements, including morning prayer, are broadcast. The prayers are piped into the classroom, Mr. Chesla added, but not while the Shared Time students are there. *Testimony of Jim Chesla*. Edward Wagner, the Principal at West Catholic, testified that

he oversees the removal of religious artifacts from the Shared Time classes. *Testimony of Edward Wagner*.

99. At certain schools the Shared Time classrooms are not used for any functions of the nonpublic schools in which they are located. Timothy Dwyer of Sacred Heart School and Dale Hollern of Catholic Central High School testified to this effect. At Oakdale Christian School, however, Phyllis Penny, a Shared Time teacher in reading, testified that her class is used by the Christian Learning Center before her Shared Time reading class convenes. The gym at Immaculate Heart of Mary is used for events other than the Shared Time physical education classes, including weddings, basketball, and church-related activities put on by the parish church. *Testimony of Sister Mish*.

100. All Shared Time and Community Education teachers are given "Shared Time Guidelines" that instruct them on the "dos and don't" of injecting religion into their classes. *Exhibit LLL*. Once the Shared Time teacher begins to teach, no discussion of religiously related topics is permitted. Dr. Vrugink testified that once the teachers are supplied the guidelines and instructed not to broach the subject of religion, there is no further attempt to monitor Shared Time teachers or classes for religious content. He added that they "know the rules" of the public schools on this matter, and are adequately forewarned. *Testimony of Elmer Vrugink*.

101. Virtually all of the Shared Time teachers who were witnesses in this case testified unequivocally that there is no monitoring for religious content by their public school employers. Jim Chesla, for example, "Math Topics" teacher at West Catholic, testified that he is supervised and evaluated by William Oosse of the public schools, who observes him several times during the school year for a general evaluation. There is no supervision by West Catholic staff. *Testimony of Jim Chesla*.

102. On an administrative level, William Gritter, Superintendent of the Christian School Association, testified that he and Ronald Cook (the Superintendent of the Catholic Schools) and David Seamon (the Superintendent of the Catholic Secondary Schools) occasionally meet with John Dow, Superintendent of the Grand Rapids Public Schools, and Elmer Vrugink, Deputy Superintendent. The purpose of these meetings is to "facilitate communication between our system". Good communications, he continued, has fostered an educational climate that is a "model" for systems throughout the country to follow. When asked by Plaintiffs' counsel if the group ever discusses the Shared Time program, Mr. Gritter replied that reference is occasionally made to the program.

103. Edward Wagner, Principal and the Coordinator of the Community Education Program at West Catholic High School, testified that the teachers are not monitored specifically for religious content, but as part of an overall observation and evaluation. Similarly, John Jaksa, Principal and a Community Education aide and teacher in the Community Education Program at St. Stephen's School, testified that he meets with an observer from the public schools but does not discuss any issues concerning religion. Mr. Jaksa stated that there is no prayer in the Community Education or Shared Time programs; however, there is prayer in every other class.

104. Phyllis Penny, a Shared Time remedial reading teacher at Oakdale Christian School, testified that she was not monitored at all during 1981-82 by the public schools. She was told at the outset of her work there not to keep any religious objects in class.

105. Kraig Johnson, Principal of Immanuel-St. James Lutheran Schools, testified that the Shared Time Guidelines are followed at the Lutheran Schools.

106. David Bailey, Grand Rapids Assistant Superintendent for Personnel, and Betty Rowlands, Grand Rapids Supervisor of reading, testified that no inquiry is made into the religious affiliation of the teacher or whether religion is discussed in the Shared Time programs. When asked how she could be sure that religion was never injected into the class, Mrs. Rowlands testified that because the Shared Time staff knows that violation of the Shared Time Guidelines is forbidden, it is simply not done.

107. Kurt Mirandette, a Shared Time physical education instructor at St. James, testified that religion is not a factor in his employment there and is not discussed by his evaluator, Joe Leonardo, Assistant Director of Athletics for Grand Rapids Public Schools. Mr. Mirandette finds out when Holy Days of Obligation occur at St. James in order to avert conflict with his Shared Time classes.

108. Catholic elementary schools are located on the same premises with, and adjacent to, parish churches of the Roman Catholic Church. In many instances, as with Sacred Heart and St. Stephen's, the school is physically connected to the parish church. *Testimony of John Jaksa, Timothy Dwyer.* Both Catholic Central High School and St. Andrew's Elementary School are adjacent to St. Andrew's Cathedral in the near downtown, southeast area. *Testimony of Dale Hollern.*

C. Student Body Identity

109. In every Shared Time and Community Education class in the nonpublic schools, there is complete student body identity between the "public school" classes and the nonpublic schools. In other words, the Shared Time and Community Education classes are filled *exclusively* from the student body of the parochial school within which the classes are held. *Exhibit 90 at Interrogatory 13. Testimony of Elmer Vrugink, William Gritter.* The single exception is a student who attends

a Shared Time industrial arts class at Christian High School with Daniel Visser. *Testimony of Daniel Visser*. This student otherwise attends the Christian Learning Center, which provides education and training for students with learning disabilities. *Id.*

110. Despite the fact that there were over 10,000 students participating in the Shared Time program during the 1981-82 school year, no evidence has been offered by the Defendants that any of the students come from the public schools of Grand Rapids. The Defendants have attached the label "public schools" to Shared Time classes even though the students are drawn exclusively from the private religious schools that participate in the program.

111. The "public school" character of the Shared Time program derives only from the fact that the teachers are paid by the Grand Rapids Public Schools and that the textbooks and teaching materials are supplied by the public schools.

112. Dr. Vrugink, Mr. Young, and others have testified that the Shared Time and Community Education classes are "open" to the community at large. The theoretical availability of these classes to public school students and others is belied by statistics revealing that the "public school" classes consist of private school students only. Dr. Vrugink testified at some length under questioning by Plaintiffs' counsel that basing the Shared Time classes at a public school where they could be attended by both public and nonpublic students would be "far out" and "unreasonable" for those who would have to walk the distance. Mr. Young, in referring to numerous charts (Exhibits JJ(a)-JJ(qq)), testified that an inordinate number of instructional hours would be lost if large numbers of nonpublic school students walked or were bused to the "neutral" sites hypothesized by Plaintiffs' counsel.

113. As a practical matter, therefore, a policy decision of Defendant Grand Rapids School Board has decreed that Shared Time classes must remain at the same site where the students' other classes in the nonpublic school are offered.

D. Teacher and Staff Identity

114. In addition to the identity between the student body at the nonpublic schools and the students enrolled in the Shared Time and Community Education classes, there is a great amount of duplication between the teachers and staff in the Shared Time program and the nonpublic schools at which it is offered. In an unusual number of instances, teachers who are employed by a given nonpublic school are also employed by the Grand Rapids Public Schools in the Shared Time or Community Education programs at the *same* school. In other cases, teachers now working in the Shared Time or Community Education programs in certain nonpublic school buildings were previously employed by the nonpublic school at that same building.

115. Based upon testimony and exhibits concerning the Grand Rapids Public Schools' guidelines for Shared Time classes (*see Exhibit LLL*), teachers who work full time in the nonpublic schools, where religion is an integral part of the curriculum (*see Findings of Fact 6-87*), must reverse roles in the Shared Time classes. As employees of the Grand Rapids Public Schools, they must discard any expression of the religious values that are otherwise part of the nonpublic school's reason for existence. They must do this, furthermore, within the same building that offers all of the other classes, including religious studies, that the students must take. In short, the Shared Time classes are filled with students all of whom are also enrolled for all other classes at the private religious school, are conducted by teachers many of whom are present or former employees of the nonpublic school where the classes are held, and take place within the bosom of the nonpublic school.

116. A survey of various nonpublic schools and Shared Time teachers establishes the extent of duplication between the Shared Time and nonpublic school teachers. Sister Mish, the Principal at Immaculate Heart of Mary, testified that her Administrative Assistant, Sister Regina Mary Godell, also runs the Community Education program that is financed by the Grand Rapids Public Schools. This program includes such classes as mathematics, recreational activities, quilting, cross stitching, and computer work, all taught after regular school hours. Sister Mish further testified that *all* of the Community Education classes are taught by 6 or 7 Immaculate Heart of Mary teachers working for the Grand Rapids Public Schools.

117. Jim Chesla has been a Shared Time instructor in "Math Topics" at West Catholic High School since 1980. This is essentially a remedial course designed to help students who have difficulty in mathematics. For the past three years he has also coached girls' tennis as an employee of West Catholic. Immediately prior to Mr. Chesla's employment in the Shared Time program he was employed full-time by West Catholic to teach mechanical drawing, architectural drafting, and some mathematics. This employment lasted from 1975 to 1979. In 1980, Mr. Chesla began to work in the Shared Time program in one of the same areas he had taught at West Catholic—mathematics. He testified that he "does not know" why he was assigned by the Grand Rapids Public Schools back to the same building where he had previously been employed by West Catholic High School. *Testimony of Jim Chesla.*

118. Edward Wagner, Principal of West Catholic High School, is also the "Coordinator" of the Community Education program at West Catholic. According to his testimony, Mr. Wagner wears "two hats"—one for West Catholic and the other for the Grand Rapids Public Schools. The Community Education program takes place immediately before and after the regular school hours at West Catholic. He is paid \$3,000

per year by the public schools. Once or twice per year he meets with John Young, Director of the Shared Time program. The Assistant Principal at West Catholic, Richard Cebelak, is paid \$10.00 per hour to teach a Community Education class at West Catholic High School called Michigan Outdoors. *Testimony of Edward Wagner.*

119. The enrichment classes conducted by the public schools before school begins are taught by teachers some of whom are also employed by West Catholic. *Testimony of Edward Wagner.* Exhibit 93 details the extent of cross-over between West Catholic and its Community Education program in terms of teachers and staff. Twenty of the twenty-four Community Education teachers also teach classes as West Catholic employees. Seven of these teach subjects that are very similar to those they teach as West Catholic employees. Several teachers were hired by Grand Rapids Public Schools who previously worked for West Catholic. Three names mentioned by Mr. Wagner were Timothy Kohane (Shared Time and Community Education), Robert Galvin (Shared Time), and Maurice DeVoe (Community Education Industrial Arts).

120. The Shared Time operation at Catholic Central High School is similar to that at West Catholic. Dale Hollern, Principal at Catholic Central, doubles as a Supervisor of the Community Education program at Catholic Central for the Grand Rapids Public Schools. As an employee of the public schools, he is paid \$9.50 or \$10.00 per hour for work performed during the morning Community Education program, which lasts from 7:45 a.m. to 8:25 a.m. every school day. Part of Deacon Hollern's job consists of supervising the floors where the morning Community Education classes convene. Raymond McCahill, the Assistant Principal at Catholic Central, is employed by the public schools as the "Coordinator" of the "Community Education" program. In addition to his duties as Assistant Principal and Coordinator of the public school programs

at his school, Mr. McCahill coaches basketball for Catholic Central students. *Testimony of Dale Hollern.*

121. Deacon Hollern testified that approximately one-third of the staff at Catholic Central also teaches in the Shared Time program. *Exhibit 92*, however, itemizes the teachers who teach in both the Catholic Central and Shared Time programs. Twenty-three out of the twenty-five teachers (92%) who work in Community Education also work at Catholic Central. Ten of the twenty-three work in subjects that are very similar to, or at least cognates of, the subjects they teach as Catholic Central employees. A closer look at several of these teachers establishes the extent of intermingling between Catholic Central and the Shared Time program conducted there. Elizabeth McKinney teaches "Math Topics" in the Shared Time program at Catholic Central. She is also employed by Catholic Central as a volleyball coach. Matt Rockwood was employed full time at Catholic Central in physical education for three or four years when he became employed in the same subject area by the Grand Rapids Public Schools at Catholic Central. He is also now employed by Catholic Central as a football and baseball coach. Beatrice Johnson is employed by the public schools in Shared Time physical education after having previously worked at Catholic Central teaching the very same subjects. All three of these instructors are Roman Catholic. *Testimony of Dale Hollern.* With respect to these three teachers, Deacon Hollern's testimony directly contradicts the table in *Exhibit 92*, which lists them solely as public school teachers.

122. At Sacred Heart School, Principal Timothy Dwyer testified that the teachers in the Community Education program are drawn entirely from the full-time faculty of Sacred Heart. Sacred Heart's handbook states that "[t]hroughout the year students may enroll in after-school Community Education classes offered by Sacred Heart's faculty." *Exhibit 4* at 6 (emphasis added). Mr. Dwyer himself is employed by the Grand

Rapids Public Schools as a Community Education "Aide" at a rate of \$88.00 bi-weekly. *Testimony of Timothy Dwyer.*

123. The Principal at St. Stephen's School, John Jaksa, testified that he is employed by the public schools as a Community Education "Aide" and teacher at a bi-weekly rate of \$99.00. As an Aide, Mr. Jaksa organizes the Community Education program at St. Stephens: i.e., what teachers, rooms, and students will be available for the sixteen Community Education classes. He also teaches arts and crafts in this program. With only one exception, all of the Community Education teachers are drawn from the faculty of St. Stephen's School. *Testimony of John Jaksa.*

124. The extent of duplication between the Grand Rapids Christian School Association and the Public Schools Community Education program is described by the testimony of William Gritter, Superintendent of the Association, and *Exhibits 57* and *58*. All of the programs listed in the "zero hour" on the class schedules for Christian High School are Grand Rapids Public Schools Community Education with the exception of counseling, study room, administration, library, preparation, and tutorials. *Exhibits 57 and 58; Testimony of William Gritter.* All other classes shown on these class schedules are Christian High School classes. *Id.* Nearly all the instructors who regularly teach as full-time employees of Christian High School also teach the "zero hour" Community Education classes. Indeed, Schrotenboer teaches a Community Education class that is the same topic and in the same room as her Christian High School classes. *Exhibit 58.* Ten of sixteen Christian High School teachers who are also Community Education employees teach "zero hour" classes that are similar to the ones they teach for Christian High, and in the same rooms. *Id.*

125. Daniel Visser is a full-time Shared Time instructor in Industrial Arts at Christian High School. From 1961 to 1977,

Mr. Visser was employed by Christian High School as an Industrial Arts instructor. In 1977 he filled an opening in the same area offered by the Grand Rapids Public Schools in the Shared Time Program and was thereupon assigned by Defendant Grand Rapids Public Schools back to the same building (Christian High School) where he had previously taught as an employee of Christian High School. Following the change of hats, Daniel Visser was back at the same school teaching the same subjects to the same students, but now receiving his paychecks from Grand Rapids Public Schools instead of Christian High School. *Testimony of Daniel Visser.*

126. Kenneth Zandee accomplished the same transition in employment. For about 15 years following graduation from Christian High School and until 1977, Ken Zandee was a full-time physical education teacher at Christian High School. In 1977 he applied for and obtained the position of full-time physical education teacher in the Grand Rapids Public Schools Shared Time program, and he was assigned by Defendant School District to teach at Christian High School. So, as with Daniel Visser, Ken Zandee came back to Christian High School, this time as a public school employee paid from tax funds, to teach the same subject to the same Christian School students. In the transition, Defendant Grand Rapids Public Schools had taken over the boys physical education course at Christian High School, thus relieving the Grand Rapids Christian Schools of the expense of operating that area of its curriculum. *Testimony of Kenneth Zandee.*

127. Ken Zandee also teaches a course called Body Mechanics in the "zero hour" Community Education program conducted by Defendant at Christian High School. Also, he is employed by Christian High School as the Basketball Coach. Thus, Ken Zandee actually wears *three hats*—full-time public school physical education Shared Time teacher, part-time

"zero hour" public school Community Education teacher, and part-time Basketball coach of the Christian High School team.

128. Both Mr. Zandee and Mr. Visser testified that they are members of the Christian Reformed Church, that they have children attending Christian Schools and that they subscribe to the "Basis" statement of the Grand Rapids Christian School Association quoted in proposed Finding of Fact 50.

129. At the remaining Christian schools, at least four present Shared Time teachers have been identified as former employees of the Christian School Association. Randy Commeret, now a Shared Time teacher at Creston-Mayfield Christian School, was previously employed at Christian High School just before working for the public schools. Clare Vredevelde was employed by the Association immediately before becoming a Shared Time teacher at Millbrook Christian School. Norma Bratt works as a Shared Time teacher at her former jobsite, Seymour Christian School. And Dick VanderKamp, who used to teach for Oakdale Christian School, now teaches as a Shared Time teacher at both Oakdale and Seymour Christian Schools. *Testimony of William Gritter and Ronald Boss.*

130. David Bailey, Assistant Superintendent for Personnel at the Grand Rapids Public Schools, testified that the same procedures are used in hiring all Shared Time teachers. When asked whether Kenneth Zandee, Edward Wagner, and Dick VanderKamp (all of whom are employed both by the Grand Rapids Public Schools and the non-public schools where Shared Time classes are offered) were hired in part because they had been employed where the Shared Time classes were being offered, Mr. Bailey testified that he "does not know" whether that was a factor in the overall consideration of them. *Testimony of David Bailey.* John Young, Director of the Shared Time program, testified that Edward Wagner (Principal of West Catholic) would be his "first choice" for Community

Education Coordinator at West Catholic. *Testimony of John Young.*

E. Coordination of Classes and Schedules

131. In the 1981-82 school year, the Shared Time and Community Education programs employed 470 teachers, providing services to over 10,000 students, virtually all of whom attend nonpublic schools. *Exhibit 90* at Interrogatories 74, 16, & 64. The cost of these programs exceeds \$3,000,000. Forty-one private religious schools participate in Shared Time and around 1,500 classes are held. *Id.* at Interrogatory #79 & Attachment.

132. In order to coordinate the scheduling of this many teachers, classes, and students, the Grand Rapids Public Schools takes the following steps: First, packets are sent to the nonpublic schools offering Shared Time and Community Education classes. The nonpublic schools, in turn, indicate what classes they wish to accept. John Young contacts the nonpublic schools to determine what classrooms are available for the Shared Time classes. He also confers with the Shared Time teachers to see if the rooms provided by the nonpublic schools are sufficient. *Testimony of John Young.*

133. Second, the scheduling of classes is done by the Grand Rapids Public Schools in conjunction with the participating nonpublic schools in light of these facts: (1) the school years of the public school system and the forty-one nonpublic schools are not necessarily coterminous, (2) the nonpublic schools have religious holidays that are not necessarily recognized by the public schools, (3) the nonpublic school students in Shared Time Classes have other classes, and (4) a strike by public school teachers occurred in 1981-82 disrupting the original schedule. Indeed, the Shared Time program is structured so as to "accommodate" the student

body of the various nonpublic schools. *Testimony of Elmer Vruggink.*

134. Remedial reading teachers in the Shared Time program face problems in scheduling unique to their specialty. Because the nature of this reading program requires that the nonpublic school students be assessed individually, *Exhibit B* at 9, the Shared Time instructors must coordinate their classes with the nonpublic school teachers. For example, Phyllis Penny, who teaches remedial reading at Oakdale Christian School for the Grand Rapids Public Schools, is informed by the nonpublic school teacher of what students will attend her class. Because she does no diagnostic testing, Mrs. Penny relies on the nonpublic school teachers to determine for her the students who will use her services. *Testimony of Phyllis Penny.*

135. Margaret Kroon, a diagnostic and remedial reading Shared Time teacher at Holy Spirit School, selects students for her classes from the Holy Spirit student body. Mrs. Kroon is Roman Catholic. The classroom teacher tests his or her students to determine the need for Mrs. Kroon's reading classes and supplies the test results to her. Mrs. Kroon also administers various tests to diagnose reading problems. *Testimony of Margaret Kroon.*

136. Ann Barth, a Shared Time remedial reading teacher at St. Jude's School and a Roman Catholic, gives diagnostic reading tests similar to those given by Margaret Kroon. One of Miss Barth's first tasks during the 1981-82 school year was to set up a time schedule that would mesh her classes with those of the St. Jude teachers. On the first day of the 1981-82 school year, she went to the various classroom teachers to resolve scheduling conflicts. Candidates for her reading classes are recommended to her by the St. Jude teacher and then tested by her. *Testimony of Ann Barth.*

137. Gwen Prong, a Shared Time enrichment reading teacher at West Side Christian School, tested around 120 students herself, going to various classrooms to diagnose them. *Testimony of Gwen Prong*. See *Finding of Fact 97* for a discussion of Mrs. Prong's efforts to desanctify the portions of the nonpublic school classrooms she visited.

138. John Young testified that the "zero hour" at Christian, West Catholic, and Catholic Central High Schools are coterminous with the public school calendar. See *Exhibits 57 & 58*.

139. William Gritter identified a number of Shared Time teachers who are listed as employees of the Christian Schools during the 1981-82 school year. *Testimony of William Gritter*. At Millbrook Christian School, the "Staff List" indicates at least, three Shared Time teachers—Gwen Pott (art), Clare Vredevelt (physical education), and Shirley Van Woerkem (remedial reading)—as employees of Millbrook. *Id.*; *Exhibit 51* at 2. Gwen Pott's and Clare Vredevelt's schedules are set forth on the "Room and Master Schedule 1981-82 Millbrook Christian School" even though they are public school employees working in the Shared Time program. *Exhibit 51* at 6. Furthermore, all the classes listed under their names are Shared Time classes. *Id.* Even the locations of these "public school" teacher's classrooms are illustrated in the student handbook published by Millbrook Christian. *Id.* at 7. In no instance is there any indication that these are Shared Time teachers or classes. Mr. Gritter testified that "a mistake" was made in including these exclusively public school employees in a publication describing a Christian School. The same "mistake" is included in the 1981-82 parent handbook for Millbrook. *Exhibit 50* at 2.

140. The staff list of the 1981-82 parent handbook for Creston-Mayfield Christian School lists three Shared Time teachers as belonging to the staff of Creston-Mayfield: Mr.

Commeret (physical education), Mrs. Koopman, and Mrs. Koetje (both "special classes"). There is nothing to indicate, however, that they are public school employees alone. *Exhibit 52*; *Testimony of William Gritter*. Mr. Gritter agreed that whoever drafted the handbook had made an "error." *Id.*

141. In the 1981 Seymour Christian School parent handbook, the staff directory intermingles the names of four Shared Time teachers—Norma Bratt (aide), Charlotte De Vries (aide), Gwen Pott (art), and Dick VanderKamp (physical education)—with the names and classes of the Seymour Christian teachers. *Exhibit 48* at 2. Again, no mention is made of the fact that these teachers are public school employees only. Indeed, the impression conveyed is that every teacher listed there is a Christian School teacher.

142. The "Special Interest Programs" at St. Stephen's School include the Shared Time courses (reading enrichment, math enrichment, spanish, and physical education) as if they were part of the curriculum offered by St. Stephen's School. *Exhibit 11* at 2 (the morning, during, and afterschool Shared Time programs at St. Stephen's and all other nonpublic schools are itemized at *Exhibit III & Exhibit 90* at Interrogatory 79 & Attachment). There is no reference to the "public" nature of these classes. Sacred Heart School and Marywood Academy integrate Shared Time classes and teachers directly into their publications, often without so labelling them. *Exhibit 4* at 2, 6; *Exhibit 3*.

143. Immaculate Heart of Mary School, not the Grand Rapids Public Schools, dictates the manner by which parents can confer with their child's teacher in the Shared Time program: "[p]arents wishing to confer with a child's teacher can do so by calling the school office and arranging for an appointment. Appointments with special teachers—band, music, art, special reading, etc. [Shared Time classes]—should also be made in this manner." *Exhibit 6* at 3 (emphasis added).

144. Most Catholic elementary schools prescribe and enforce a "Dress Code" for students, both boys and girls. *Exhibit 1* at 9; *Exhibit 3* at 2; *Exhibit 4* at 5; *Exhibit 6* at 5-6. This dress code is maintained even when students attend elective Community Education classes at a public school building. See *Exhibit 6* at 52, where parents of Immaculate Heart of Mary students are admonished: "since elective classes are an extension of IHM's school day, students who attend them must abide by IHM's Dress Code."

145. Each of the publications described above was published for the audience (parents and students) intended to receive it. *Testimony of William Gritter, John Jaksa, Timothy Dwyer, and Sister Janet Mish.*

F. Political Entanglement

146. Both Deputy Superintendent Elmer Vrugink and Lawrence Pojeski, President of the Grand Rapids Board of Education, testified that the Shared Time and Community Education programs have been helpful to the Grand Rapids Public Schools at millage elections. In the March 1980 millage campaign Defendant School Board published a citizens handbook "Millage 1980" which was distributed as a factual sourcebook to campaign workers. *Exhibit 28*. At pages 29-30 it describes the various services provided by Defendant for nonpublic schools, listing among these the Shared Time and Community Education programs. Defendant School District has purposely made a political issue of these programs and services in order to favorably influence the outcome of school millage elections. See *Exhibit KKK* at 10, which is a Report by the Committee to Study Community Education.

147. In the last three to five years during which the Shared Time and Community Education programs have shown their greatest growth, nonpublic schools in the Grand Rapids area have maintained or increased enrollments, while the Grand

Rapids Public School District has suffered consistent annual losses. *Exhibit 72* (Christian Schools); *Exhibit 20* at 73 (Catholic Central and West Catholic High Schools); *Exhibit TTT* at 9. In one year alone, 1980-81 to 1981-82, the Grand Rapids School District suffered a decline of 3.5% (909 students) in grades K-12. *Exhibit 90* at Interrogatories 91, 92.

148. In the past five years Defendant Grand Rapids School District has closed nine school buildings previously occupied by elementary and middle school programs, and four of these have been sold to sectarian school associations which have re-opened them with religious school programs (Michigan Oak, Crestview, Oakleigh, and Burr Oak). *Exhibit 90* at Interrogatories 69, 70, 71.

G. Miscellaneous Contacts

149. Betty Rowlands, the Grand Rapids Public Schools Reading Supervisor, testified that grades for the Shared Time reading classes are sent to the students through the Shared Time office. Deacon Dale Hollern testified that credits or grades for Shared Time classes are sent to him by the Grand Rapids Public Schools. Edward Wagner testified that credits and grades are received via a transfer from the public schools. He added that Shared Time classes are credited toward the student's graduation.

150. Sister Mish testified that any equipment owned and used by the Grand Rapids Public Schools is locked in storage rooms and closets on the premises of the nonpublic school buildings. Messages for Shared Time staff members are routed through the school office. Shared Time teachers have access to the Immaculate Heart of Mary teacher's lounge.

151. The "Guidelines for Parents" states that parents who wish to confer with "special teachers—band, music, art, special reading, etc." should contact the school office for an appoint-

ment. *Exhibit 6* at 3. The very next paragraph in the "Guidelines" provides for the procedure to be followed when a dispute arises between parent and teacher. *Id.* Parent-teacher conferences at other schools do not distinguish between Shared Time and private school teachers in terms of arranging appointments. *Exhibit 1* at 15; *Exhibit 4* at 9; *Exhibit 18* at 12; *Exhibit 46* at 7; *Exhibit 47* at Q; *Exhibit 49* at 5.

III. PRIMARY EFFECT OF ADVANCING RELIGION

152. During the 1981-82 school year, forty-one private religious schools accepted Shared Time classes from the Grand Rapids Public Schools. *Exhibit 90* at Interrogatory #79 and Attachment (this excludes Climbing Tree School, which is a secular private school, and Grand Rapids Baptist Academy, Plymouth Christian School, and Lamont Christian School, which participate only in Outdoor Education, a program which has been dismissed from this lawsuit).

153. Analysis of *Exhibit 90* at Interrogatories 8 and 79 reveals that for the school years from 1978-79 to 1981-82 the number of participating nonpublic schools and Shared Time and Community Education classes has steadily increased. The following table sets forth the extent of increase in each category:

	1978-79	1979-80	1980-81	1981-82
<i>Participating</i>				
<i>Nonpublic Schools</i>	37	37	38	41
<i>Shared Time and</i>				
<i>Community Education</i>				
<i>Classes</i>	1,095	1,101	1,149	1,757

From a small beginning about 1973, the program has mushroomed to cover 41 schools and over 1,750 classes.

154. Lawrence Pojeski has been a member of the Grand Rapids Board of Education for thirteen years. He was elected President of the Board in June 1981. Mr. Pojeski generally agreed that the Shared Time program has grown and that no attempt has been made to slow the increases in the program. In response to a question from Plaintiffs' counsel, he agreed that it might become a "viable possibility" to lease the entire private school building "except for catechism." This striking attitude displayed by the head of the School Board reflects the trends mentioned above. *Testimony of Lawrence Pojeski.*

155. The Shared Time classes offered during regular school hours consist of art, music, physical education, reading, and mathematics. In addition, Community Education classes offered before school and after school at the private schools consist of over 200 courses in a wide variety of subject areas. *See Exhibit III and Attachment.* At Catholic Central, West Catholic, and Christian High Schools such courses as psychology, journalism, calculus, creative writing, advanced biology, and criminology were offered by the public schools during the 1981-82 academic year. *Id.* The Catholic and Christian Elementary Afterschool programs have around 160 "public school" classes covering over fifty class titles. *Id.*

156. Witnesses from the nonpublic schools have testified that their schools receive no monetary or educational benefit from the Shared Time program. They imply that the nonpublic school students are the sole beneficiaries of the "public school" classes. An examination of their testimony and various nonpublic school publications, however, establishes that the program directly benefits the nonpublic schools themselves.

157. The "Guidelines for Parents" of Immaculate Heart of Mary School provides:

COMMUNITY EDUCATION CLASSES

A variety of classes for enrichment purposes are offered after school one day per week for interested children at no cost to them. The sessions are financed through the *Catholic Community Education Office which is subsidized by the Grand Rapids Public Schools Community Education Program*. IHM Community Education classes run for twelve weeks each semester; classes are about one hour and forty minutes long. Complete information about this program is sent home in special bulletins to parents prior to the beginning of the classes. *Exhibit 6 at 3* (emphasis added).

Thus, the official parent handbook for Immaculate Heart of Mary School contains this admission that a program of the school is subsidized by the Defendant Grand Rapids Public Schools through the Community Education Program.

158. Throughout the handbooks and brochures of the private schools, the Court finds repeated references to the total education and curriculum offered by the private schools. Immaculate Heart of Mary, for example, "provides a *full grade school curriculum* in an environment which offers children opportunities to live in society as mature, responsible, Christian citizens, deeply committed to God and His Kingdom." *Exhibit 6 at "i."* (emphasis added). In the same publication, there is a description of Shared Time classes that are available as part of the total curriculum of Immaculate Heart of Mary School. *Id. at 50-51.*

159. Because these classes were not offered before Shared Time and are "supplementary," it is apparent that the Grand Rapids Public Schools thereby enable Immaculate Heart of Mary and the other private schools to offer a "full grade school curriculum." Sister Janet Mish testified that the Shared Time courses add to the "fullness of life" and are part of the "total

educational program." Although she added that the children would suffer most from not having music, art, and physical education classes, it is absurd to argue that the school would not suffer as well. Its ability to attract and retain students is directly related to the wide variety of courses offered in the Shared Time program. Indeed, a small handout published by Immaculate Heart of Mary that can be best described as an advertisement emphasizes the wide spectrum of courses that Shared Time enables the school to provide. *Exhibit 5.*

160. The St. Adalbert handbook advertises the fact that Community Education classes are offered at "no cost to the student. The classes are financed through the *Catholic Community Education Office which is subsidized by the Grand Rapids Public Schools Community Education Program.*" *Exhibit 1 at 9* (emphasis added).

161. Marywood Academy announces that its "Curriculum includes: art and music, dance and drama, physical education, and foreign languages." *Exhibit 3.* Art, physical education, and foreign languages (latin, spanish, and french) are Shared Time classes at Marywood. *Exhibit 90 at Interrogatory #79, Attachments A and B.* These Shared Time and other "supplementary" classes are listed as part of the total curriculum to inform parents and students of the diversity of its school program.

162. Under the caption "Curriculum," Sacred Heart School "offers its students a well-rounded curriculum which focuses on the basics. . . . Augmenting the curriculum are full-time consultants in the areas of Reading and [Shared Time] Mathematics. These teachers are available to provide remedial or enrichment material for students. . . . Regular weekly instruction in Music, Art, and Physical Education are provided through the Shared Time Program of Grand Rapids Public Schools." *Exhibit 4 at 6. See Exhibit 90 at Interrogatory #79, Attachment A.* Timothy Dwyer testified that Sacred Heart

would continue without the Shared Time classes; nevertheless, he would attempt to replace them. An attempt to replace certain classes that might be eliminated is solid evidence of their value.

163. St. Stephen's School includes "Enrichment Programs" as part of its curriculum in addition to what the Defendants have generally labelled "core subjects." *Exhibit 11* at 2. The brochure also lists "Community Education," "Support Services," and "Special Interest Programs," all of which contain some Shared Time courses. *Id.* at 2-3; *testimony of John Jaksa*; see *Exhibit 90* at Interrogatory #79, Attachment "A" and *Exhibit III* for a complete survey of "public school" classes at St. Stephens School.

164. Catholic Central High School offers "a variety of fully accredited enrichment courses" in the morning Community Education program. *Exhibit 21* at 3-4. Many of these elective courses supplied by the public schools are extensions or cognates of other electives offered by Catholic Central. Indeed, some Community Education classes have prerequisites offered by Catholic Central. *Exhibit 21* at 4-1 to 13-1 (Community Education courses are designated as "900" level courses in the curriculum guides).

165. One course in particular illustrates the benefit of the Shared Time program to Catholic Central. During 1981-82, a class was offered by Catholic Central entitled "Yearbook." *Exhibit 21* at 6-3. This is a journalism-type class that is responsible for publishing *Spires*, the yearbook of Catholic Central. *Id.* For the 1982-83 school year, however, the "Yearbook" class will be taken over by the Shared Time program of the public schools. *Exhibit 22* at 6-3 and 3-5. Thus, the Grand Rapids Public Schools will be (1) offering exactly the same course that was previously provided by Catholic Central and (2) directly financing a quintessential Catholic Central

publication. The same subsidy is conferred upon Oakdale Christian School, which also has a Shared Time "Yearbook" class. *Exhibit III*.

166. Catholic Central recommends various study programs for its students according to their career interests. *Exhibit 21* at 3-1 to 3-3. Some of the "suggested electives" for these programs are Shared Time classes. In fact, in the "Business Education Program," certain Shared Time or Community Education classes such as Business Machines and Business Law are "highly recommended." *Id.* at 3-3 and 5-1.

167. At Catholic Central and West Catholic, physical education is *required* for graduation. *Exhibit 21* at 3; *Exhibit 23* at "a" and "b." Physical Education is a Shared Time course. *Exhibit 90* at Interrogatory #79, Attachment A.

168. The Introduction to the West Catholic High School handbook singles out the wide spectrum of the academic program and specifically includes programs that are "supplemental":

West Catholic features a sound academic program which enables students to attend the college or pursue the career of their choice. *The standards are high and the curriculum is broad.* Besides the standard college prep curriculum students may select college credit courses in English, History or political studies in the West Catholic facility. Also available in the West Catholic facility are Home Economics, nursery school training, woodworking, arts and crafts, architectural drawing, ceramics, leadership training and theater arts. For students interested in vocational courses, there are the Skills Centers, Educational Park and Incentive to Learn. *Exhibit 24* at 1 (emphasis added).

The importance of these "supplemental" classes lies in the very language used by West Catholic to describe its program. The school "features" a complete and "sound" academic program. A curriculum augmented by Shared Time and Community Education classes allows West Catholic to offer what it could not otherwise provide to its students. The diversity of the curriculum is an attribute that distinguishes West Catholic from other secondary schools. In describing the Shared Time program, West Catholic speaks as if the classes were provided by it in conjunction with the Grand Rapids Public Schools:

West Catholic offers optional classes each morning from 7:30 to 8:10. This program is designed to offer students the opportunity to take courses which could not be offered during the regular school day. All students have the opportunity to take classes and they are given credit on their permanent record. This program is funded by Grand Rapids Community Education. *Exhibit 24* at 19.

169. The Christian Schools are likewise concerned that people know they have a complete and comprehensive academic program. In a television program sponsored by the Grand Rapids Christian School Association for its April 1982 fund drive, the viewer is informed that the Christian Schools "have art and music classes, just like other schools have." *Exhibit 82* ("Focus on Christian Education") at 1. At the elementary schools, "[s]pecialized teachers are available to all students in art, vocal music, physical education, band, and orchestra." *Exhibits 60-63* at 2.

170. Creston-Mayfield Christian School

offers a comprehensive curriculum. Heavy emphasis is placed upon reading, language, arts, and mathematics. Other subject areas include religious studies, social studies,

science, penmanship, spelling, physical education, music, art, band, and orchestra. *Exhibit 59* at 2.

Reading and physical education are Shared Time classes. *Exhibit 90* at Interrogatory #79, Attachment A. Grand Rapids Christian High School "offers a broad curriculum of college preparatory, business education, and general industrial skills courses." *Exhibit 64* at 1. Industrial arts and several business courses are provided by the Community Education "zero hour" morning program. *Exhibit JJJ. Exhibits 57, 58.*

171. Lutheran Schools participating in the Shared Time program follow the same pattern of advertising a complete curriculum by reference to particular Shared Time classes. *Exhibit 13* at 2. Immanuel-St. James Lutheran School "offers a complete secular course of study covering subjects commonly taught at the Kindergarten, Elementary, and Junior High levels." *Exhibit 18* at 8. The "subjects taught are similar to those taught in the Public Schools—Language Arts, Mathematics, Social Studies, Science, Fine Arts, Physical Education, and Industrial Arts." *Id.* Art and physical education are Shared Time classes. *Exhibit 90* at Interrogatory #79, Attachment A. The administrators at the Immanuel-St. James Lutheran Schools take pains to emphasize the so-called supplemental classes in order to make a favorable comparison with the public schools.

172. All of the publications heretofore mentioned concerning the curricular diversity of the Catholic, Christian, and Lutheran schools are made available to the public. *Testimony of William Gritter, Edward Wagner, Ronald Boss, John Jaksa, Kraig Johnson.*

173. The notion that Shared Time classes supplement rather than supplant courses at the private religious schools is not a crucial factual issue in this lawsuit. The key question is whether the Shared Time classes provide educational and

financial benefit to the nonpublic schools. In a sense, a program that *increases*, rather than duplicates, the curriculum at a given school is of greater benefit to the school. Without Shared Time, Catholic Central, for example, would be unable to offer such courses as Jazz Ensemble, Vocal Jazz choir, Mechanical Drawing, Theory of Journalism, and a host of other worthwhile classes. *Exhibit 21* at 4-1 to 13-1; *Exhibit JJJ*.

174. Various school administrators have testified that they would not replace any of the Shared Time classes if the program were held unconstitutional. *Testimony of Sister Janet Mish, Robert Cichewicz*. In so stating, they could not possibly have meant that the Shared Time program is of marginal value to them. Indeed, the contrary is true. The great value of these classes was emphasized by principals, administrators, and teachers alike. Dr. Vrugink testified that the feedback about Shared Time has been highly favorable. He was applauded after speaking about the program to a group of private school parents and administrators. The reason that the private schools would not replace the Shared Time classes is the prohibitive cost of doing so. *Testimony of William Gritter*. This testimony simply confirms that the wide variety of courses offered by the public schools confers a financial and educational benefit on the private schools. If the replacement cost is "prohibitive," then the financial benefit must be large indeed.

175. The actual numbers for the 1981-82 school year establish that a substantial subsidy is being made by the Grand Rapids Public Schools to the private religious schools through the Shared Time program. It is undisputed that it costs over \$3,000,000 to provide Shared Time classes to the private religious schools. The 10,000 students participating in these part-time "public school" classes are enrolled full-time in the private religious schools which accept those classes. *See Finding of Fact 109*. Many of the teachers who teach in the morning Community Education program are also private religious school

teachers who benefit financially as Grand Rapids Public School employees. *See Findings of Fact 114-129*. There was testimony that in the afterschool Community Education classes, *all* of the teachers were also private school employees. *Testimony of Sister Mish* (Immaculate Heart of Mary), *Timothy Dwyer* (Sacred Heart), *John Jaksa* (St. Stephens).

IV. PRIVATE NATURE OF SHARED TIME CLASSES

176. Throughout the trial, the Defendants have constantly referred to the various Shared Time classes as "public school" classes. Numerous exhibits and testimony regarding the religious and racial composition of the nonpublic schools and attendance by non-residents of the Grand Rapids school district contradict the public nature of the Shared Time classes.

A. Religious and Racial Composition

177. The religious makeup of the private religious schools has been discussed in Section "I." The student bodies of the Catholic, Christian, and Lutheran Schools are overwhelmingly Catholic, Christian Reformed or Reformed, and Lutheran, respectively. *See Findings of Fact 6-87, supra*. And, as the various witnesses successively reaffirmed, students for the Shared Time classes are drawn exclusively from the student bodies of these same Catholic, Christian, and Lutheran Schools.

178. The Defendants have stressed the "open enrollment" of the Shared Time classes and the service that they provide to the community at large. However, typically, nonpublic schools enroll students who are caucasian and belong to a particular religious faith. At Catholic Central High School, for example, 847 (93%) of the 909 students enrolled during 1981-82 were white, and 877 (96.5%) were Catholic. *Exhibit 34*. At West Catholic High School, Principal Edward Wagner testified that out of an enrollment of 1,130 students, only 20 (2%) were

minorities, and 90% were Roman Catholic. Jim Chesla, a Shared Time teacher at West Catholic, testified that there are no black students there.

179. At Sacred Heart School there are no black students and only eight Hispanics out of a total of 197 students. Only ten (5%) are non-Catholic. *Testimony of Timothy Dwyer*. Out of the 424 students enrolled at Immaculate Heart of Mary during 1981-82, nine (2%) were minorities and fourteen (3%) were non-Catholic. *Testimony of Sister Janet Mish*. At Oakdale Christian School the student body is 34% minorities. At Alexander Public School, which is across the street from Oakdale, about 90% of the 600 students are black. *Testimony of Ronald Boss*. The neighborhood in which these schools are located is about 75% black. *Testimony of William Gritter, Ronald Boss*.

B. Attendance By Nonresident Private School Students in Shared Time Classes

180. It has been established from testimony that many of the private religious schools enroll students from outside the school district of Grand Rapids. *Testimony of William Gritter, Edward Wagner, Dale Hollern*. Dr. Elmer Vrugink testified that nonresidents of the Grand Rapids school district may attend Shared Time classes simply by virtue of attending the private schools participating in the program. Families from as far away as Kentwood and Cascade send their children to private schools and are thus eligible to take advantage of the "public school" classes. *Exhibit 6 at 2*. West Catholic enrolls students from such outlying areas as Sparta, Allendale, Rockford, and Coopersville. *Exhibit 24 at 4*.

181. Some of the private religious schools featuring Shared Time classes are located outside the territorial limits of the School District of Grand Rapids. St. Stephen's is in East Grand Rapids; Assumption in Belmont; Holy Name and St. John Vian-

ney in Wyoming; Holy Trinity in Alpine Township; and Zealand Christian, St. Michael, St. Joseph-Wright, Borculo Christian, and South Olive Christian are in Ottawa County approximately 15 miles outside the District. *Exhibit JJ*.

182. Dr. Elmer Vrugink testified that the attendance boundaries for the individual Grand Rapids Public Schools would not apply to the "public school" classes in the private schools. Thus, a student who attends Sylvan Christian School and enrolls in a "public school" Shared Time class is not subject to any attendance boundaries by the Grand Rapids Public Schools. That is left to the private religious schools.

183. The parents of a student who resides outside the Grand Rapids School District may apply for admittance to a school owned and operated by the District and, if such application is granted, he is admitted as a tuition student. However, a non-resident who enrolls in a parochial or other non-public sectarian school located within the Grand Rapids School District is automatically admitted to the "public school" Shared Time and Community Education classes conducted in that nonpublic school building without payment of tuition to Defendant Grand Rapids School District. *Testimony of Elmer Vrugink, William Gritter, Dale Hollern. Defendant State of Michigan Exhibit SBE-A*.

184. Dr. Vrugink and Mr. Young stressed that, as a practical matter, there would be no situation in which a student attending a public school would attend any of the Shared Time classes at the nonpublic schools. Mr. Young referred to some forty plus charts detailing the large amount of "instructional time" that would be lost if the nonpublic school students were to travel to the public schools to attend Shared Time classes. *Exhibits JJ(a)-JJ(qq)*. As a practical matter, therefore, the Shared Time classes will remain filled exclusively with nonpublic school students.

APPENDIX

Glossary of Persons who Testified as Courtroom Witnesses

David Bailey, Assistant Superintendent of Personnel, Grand Rapids Public Schools

Ann Barth, Shared Time Reading Teacher, Grand Rapids Public Schools

George Berends, Administrator, Grand Rapids Baptist Academy

Ron Boss, Principal, Oakdale Christian School

James Chesla, Shared Time Math Teacher at West Catholic High School

Coach, Girls Tennis Team, West Catholic High School

Robert Cichewicz, President, Board of Education of Sacred Heart School

Timothy Dwyer, Principal, Sacred Heart School
Public School Community Education Aide at Sacred Heart School

William Gritter, Superintendent, Grand Rapids Christian School Association

Sister Marie Heyda, O.P., Emeritus Professor of History at Aquinas College

Deacon Dale Hollern, Principal, Catholic Central High School
Public School Community Education Supervisor at Catholic Central

John Michael Jaksa, Principal, St. Stephen's School
Public School Community Education Aide at St. Stephen's School

Community Education Teacher in Arts and Crafts at St. Stephen's School

Kraig C. Johnson, Principal, Immanuel-St. James Lutheran School

Joe Leonardo, Assistant Director of Athletics and Physical Education, Grand Rapids Public Schools

Sister Janet Mish, Principal, Immaculate Heart of Mary School

Phyllis Penny, Shared Time Reading Teacher, Grand Rapids Public Schools

Lawrence Pojeski, Member, Grand Rapids Board of Education

Gwen Prong, Shared Time Reading Teacher, Grand Rapids Public Schools

Elisabeth Rowlands, Supervisor of Reading, Grand Rapids Public Schools

Daniel Visser, Shared Time Industrial Arts Teacher at Christian High School

Public School Community Education Teacher at Christian High School

Elmer Vrugink, Assistant Superintendent, Grand Rapids Public Schools

Edward Wagner, Principal, West Catholic High School
Public School Coordinator of Community Education at West Catholic High School

John Young, Director of Shared Time, Grand Rapids Public Schools

Ken Zandee, Shared Time Physical Education Teacher at Christian High School

Public School Community Education Teacher at Christian High School

Basketball Coach, Christian High School